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- San Bernardino County Transportation Commission •San Bernardino County Transportation Authority  
•San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies
- 

## **AGENDA**

### **Board of Directors Meeting**

**December 3, 2008**

**Start Time: 9:30 a.m.**

#### **LOCATION**

**San Bernardino Associated Governments  
Santa Fe Depot - SANBAG Lobby 1st Floor  
1170 W. 3rd Street, San Bernardino, CA**

#### **Board of Directors**

**President**

Gary Ovitt, Supervisor  
*County of San Bernardino*

**Vice-President**

Paul Eaton, Mayor  
*City of Montclair*

Charley Glasper, Mayor  
*City of Adelanto*

Rick Roelle, Council Member  
*Town of Apple Valley*

Lawrence Dale, Mayor  
*City of Barstow*

Bill Jahn, Mayor Pro Tem  
*City of Big Bear Lake*

Dennis Yates, Mayor  
*City of Chino*

Gwenn Norton-Perry, Council Member  
*City of Chino Hills*

Kelly Chastain, Mayor  
*City of Colton*

Mark Nuaimi, Mayor  
*City of Fontana*

Bea Cortes, Council Member  
*City of Grand Terrace*

Mike Leonard, Mayor  
*City of Hesperia*

Larry McCallon, Council Member  
*City of Highland*

Rhodes "Dusty" Rigsby, Mayor Pro Tem  
*City of Loma Linda*

Rebecca Valentine, Council Member  
*City of Needles*

Paul Leon, Mayor  
*City of Ontario*

Diane Williams, Council Member  
*City of Rancho Cucamonga*

Patricia Gilbreath, Mayor Pro Tem  
*City of Redlands*

Grace Vargas, Mayor  
*City of Rialto*

Patrick Morris, Mayor  
*City of San Bernardino*

Jim Harris, Council Member  
*City of Twentynine Palms*

John Pomierski, Mayor  
*City of Upland*

Mike Rothschild, Council Member  
*City of Victorville*

Richard Riddell, Mayor  
*City of Yucaipa*

William Neeb, Council Member  
*Town of Yucca Valley*

Brad Mitzelfelt, Supervisor  
*County of San Bernardino*

Paul Biane, Supervisor  
*County of San Bernardino*

Neil Derry, Supervisor  
*County of San Bernardino*

Josie Gonzales, Supervisor  
*County of San Bernardino*

Ray Wolfe, Caltrans  
*Ex-Officio Member*

Deborah Robinson Barmack  
*Executive Director*

*San Bernardino Associated Governments (SANBAG) is a council of governments formed in 1973 by joint powers agreement of the cities and the County of San Bernardino. SANBAG is governed by a Board of Directors consisting of a mayor or designated council member from each of the twenty-four cities in San Bernardino County and the five members of the San Bernardino County Board of Supervisors.*

*In addition to SANBAG, the composition of the SANBAG Board of Directors also serves as the governing board for several separate legal entities listed below:*

***The San Bernardino County Transportation Commission***, which is responsible for short and long range transportation planning within San Bernardino County, including coordination and approval of all public mass transit service, approval of all capital development projects for public transit and highway projects, and determination of staging and scheduling of construction relative to all transportation improvement projects in the Transportation Improvement Program.

***The San Bernardino County Transportation Authority***, which is responsible for administration of the voter-approved half-cent transportation transactions and use tax levied in the County of San Bernardino.

***The Service Authority for Freeway Emergencies***, which is responsible for the administration and operation of a motorist aid system of call boxes on State freeways and highways within San Bernardino County.

***The Congestion Management Agency***, which analyzes the performance level of the regional transportation system in a manner which ensures consideration of the impacts from new development and promotes air quality through implementation of strategies in the adopted air quality plans.

***As a Subregional Planning Agency***, SANBAG represents the San Bernardino County subregion and assists the Southern California Association of Governments in carrying out its functions as the metropolitan planning organization. SANBAG performs studies and develops consensus relative to regional growth forecasts, regional transportation plans, and mobile source components of the air quality plans.

*Items which appear on the monthly Board of Directors agenda are subjects of one or more of the listed legal authorities. For ease of understanding and timeliness, the agenda items for all of these entities are consolidated on one agenda. Documents contained in the agenda package are clearly marked with the appropriate legal entity.*

**San Bernardino Associated Governments  
County Transportation Commission  
County Transportation Authority  
County Congestion Management Agency  
Service Authority for Freeway Emergencies**

**Board of Directors**

**AGENDA**

**December 3, 2008**

**9:30 a.m.**

**Location:**

**San Bernardino Associated Governments  
Santa Fe Depot  
SANBAG Lobby, 1st Floor  
1170 W. 3rd Street, San Bernardino**

To obtain additional information on any items, please contact the staff person listed under each item. You are encouraged to obtain any clarifying information prior to the meeting to allow the Board to move expeditiously in its deliberations. Additional meeting procedures and agenda explanations are attached to the end of this agenda.

Call to Order - 9:30 a.m. by Supervisor Gary Ovitt

- I. Pledge of Allegiance
- II. Attendance
- III. Announcements
  - Calendar of Events (Pg. 16)
- IV. Agenda Notices/Modifications – Vicki Watson

***Notes/Actions:***

**1. Possible Conflict of Interest Issues for the Board Meeting of Pg. 17  
December 3, 2008**

Note agenda item contractors, subcontractors and agents, which may require member abstentions due to conflict of interest and financial interests. Board Member abstentions shall be stated under this item for recordation on the appropriate item.

## **Consent Calendar**

Items listed on the Consent Calendar are expected to be routine and non-controversial. These items have been discussed at SANBAG Policy Committee meetings and made available for public review as noted in the agenda. The Consent Calendar will be acted upon as a single motion. Items on the Consent Calendar may be removed for discussion by Board Member Request. Items pulled from the consent calendar will be brought up under Agenda Item 32.

### **Administrative Matters**

2. **Board of Directors Attendance Roster** Pg. 19
3. **Procurement Report for October 2008** Pg. 23  
Receive Monthly Procurement Report. **William Stawarski**  
**This item was unanimously received by the Administrative Committee on November 12, 2008. (Meeting chaired by Paul Eaton)**
4. **2009 Board of Directors and Policy Committee Master Calendar** Pg. 25  
Approve the 2009 Board of Directors and Policy Committee Master Calendar. **Duane A. Baker**  
**This item was reviewed and unanimously recommended for approval by all SANBAG Policy Committees.**
5. **Executive Director Authority for Purchase Orders** Pg. 39  
Approve an amendment to Policy No. 11000 increasing the Executive Director's authority for approving Purchase Orders from \$25,000 to \$50,000. **Duane A. Baker**  
**This item was reviewed and unanimously recommended for approval by the Administrative Committee on November 12, 2008. (Meeting chaired by Paul Eaton)**
6. **San Bernardino County Economic Recovery Corporation** Pg. 41
  1. Support the concept and further definition of the San Bernardino Economic Recovery Corporation (SBERC) which will work to address the impact of the housing market decline on our local economy.
  2. Direct SANBAG staff to work with public and private partners in facilitating the development of this organization.
  3. Authorize the expenditures from Task No. 49009000 (Council of Governments New Initiatives) to fund SANBAG staff and consultant work in an amount not to exceed \$50,000. **Duane A. Baker****This item was reviewed and unanimously recommended for approval by the Administrative Committee on November 12, 2008. (Meeting chaired by Paul Eaton)**

**Consent Calendar Continued....**

**Administrative Matters (Cont.)**

**7. Construction Manager and Project Controls-Contract Manager Position Reclassifications Pg. 44**

1. Approve adjusting the Salary Ranges for the Project Controls-Contract Manager position from Salary Range 22-25 to Salary Range 28-32.

2. Approve adjusting the Salary Ranges for the Construction Manager from Salary Range 26-29 to Salary Range 28-32.

3. Authorize staff to begin recruiting for the Project Controls-Contract Manager and Construction manager positions pending final approval by the Board of Directors. **Duane A. Baker**

**This item was reviewed and unanimously recommended for approval by the Administrative Committee on November 12, 2008. (Meeting chaired by Paul Eaton)**

**Regional & Quality of Life Programs**

**8. Amendments to Contracts to extend Freeway Service Patrol (FSP) services on four beats for the time period of January 1 through April 30, 2009 Pg. 48**

1. Approve Contract No. 06-021a with Armada Towing to extend the contract term to April 30, 2009, as well as increase the contract not-to-exceed by \$169,688 for a total contract amount of \$1,712,005.14 as identified in the Financial Impact Section below; and

2. Approve Contract No. 042 with Pepe's Towing to extend the contract term to April 30, 2009, as well as increase the contract not-to-exceed amount by \$69,993 for a total contract amount of \$648,333 as identified in the Financial Impact section below. **Kelly Lynn**

**This item was reviewed and unanimously recommended for approval by the Plans and Programs Committee on November 19, 2008. The contract has been reviewed by Legal Counsel as to form. (Meeting chaired by Mark Nuaimi)**

**Consent Calendar Continued....**

**Subregional Trans. Planning & Programming**

**9. Measure I 2010-2040 Model Project Advancement Agreement (PAA) Pg. 58**

1. Approve and release revised model interagency agreement for reimbursement of eligible costs for projects advanced by member agencies with local (non-SANBAG) funds in the Valley Region.

2. Approve reimbursement for Nexus Study projects for which construction begins after January 31, 2009 through an Advancement Expenditure (AE) process included in the Measure I 2010-2040 Strategic Plan as described below. **Ty Schuiling**

**This item was reviewed and unanimously recommended for approval by the Plans and Programs Policy Committee on November 19, 2008. (Meeting chaired by Mark Nuaimi)**

**10. Prioritization of Interchanges for the Measure I 2010-2040 Valley Freeway Interchange Program Pg., 69**

1. Approve the recommended methodology for prioritizing interchanges for the Measure I 2010-2040 Valley Freeway Interchange Program, including the use of vehicle-hours of delay saved per million dollars in total interchange cost as the basis for setting priorities.

2. Approve the interchange priority list in Table 1 as the basis for implementation of Measure I 2010-2040 funding allocation policies for the Valley Freeway Interchange Program, with acknowledgement that the I-10/Pepper interchange will receive further review. The list is to be updated at least every three years. **Ty Schuiling**

**This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. (Meeting chaired by John Pomierski)**

**Transit/Commuter Rail**

**11. License Agreement (SANBAG Agreement C09121) with the City of Redlands Pg. 77**

Approve License Agreement (SANBAG Agreement C09121) with the City of Redlands for the construction and maintenance of a bicycle and pedestrian trail between Grove Street and Nice Avenue within the former Atchison, Topeka and Santa Fe Railway Company's Redlands Subdivision. **Mike Bair**

**This item was reviewed by the Commuter Rail Committee on November 20, 2008 and unanimously recommended for approval. (Meeting chaired by Patricia Gilbreath)**

**Consent Calendar Continued....**

**Transit/Commuter Rail (Cont.)**

12. **Property Research for the former Southern Pacific Baldwin Park Branch** Pg. 103

Approve an increase in Purchase Order 08138 with the County of San Bernardino Surveyors Office for property research of the former Southern Pacific Baldwin Park Branch in the amount of \$20,000 for a new total of \$90,000 as identified in the Financial Impact Section.  
**Mike Bair**

**This item was reviewed by the Commuter Rail Committee on November 20, 2008 and unanimously recommended for approval. (Meeting chaired by Patricia Gilbreath)**

**Program Support/Council of Govts.**

13. **2009 State and Federal Legislative Program** Pg. 105

Approve the 2009 State and Federal Legislative Program.  
**Jennifer Franco**

**This item was reviewed by the Administrative Committee on November 12, 2008. (Meeting chaired by Paul Eaton)**

**Project Development**

14. **Amendment No. 1 to Construction Cooperative Agreement No. 08-164 (District Agreement No. 8-1322) with Caltrans and the City of Rialto for Interstate 10/Riverside Avenue Interchange Project** Pg. 115

Approve Amendment No. 1 to Cooperative Agreement No. 08-164 with Caltrans and the City of Rialto for the Interstate-10/Riverside Avenue Interchange Project construction activities. **Garry Cohoe**

**This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. SANBAG Counsel has reviewed and approved the agreement as to form. (Meeting Chaired by John Pomierski)**

**Consent Calendar Continued....**

**Project Development (Cont.)**

- 15. Construction advertising and bid package approval for SR-210 Establish Existing Planting Work for Segment 3 in the City of Rancho Cucamonga** Pg. 126

1. Approval of bid package (C09083) and authorization to staff to proceed with advertising for SR-210 Establish Existing Planting Work for Segments 3 in the City of Rancho Cucamonga.

2. Authorize staff to proceed directly to the SANBAG Board with contract award. **Garry Cohoe**

**This item was reviewed and unanimously recommended for approval by the Major Projects Committee on October 9, 2008. Counsel has reviewed and approved this contract as to form. (Meeting chaired by John Pomierski).**

- 16. Contract No. C09085 to provide Construction Zone Enforcement (COZEEP) services for Freeway Construction Projects** Pg. 155

Approve Contract No. C09085 for COZEEP services with the California Highway Patrol (CHP) for the Major Freeway Projects being managed by SANBAG in the amount not to exceed \$1,000,000 with an agreement term to June 30, 2010. **Garry Cohoe**

**This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. SANBAG Counsel has reviewed and approved this amendment as to form. (Meeting chaired by John Pomierski)**

- 17. Final Accounting for SR-210 Right-of-Way Costs** Pg. 163

1. Receive report on SR-210 final right-of-way capital expenditures totaling \$122,806,500

2. Acknowledge \$26,679,500 in expenditures over the programmed State Transportation Improvement Program (STIP) amount which will count against San Bernardino County's (STIP) share. **Garry Cohoe**

**This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. (Meeting chaired by John Pomierski)**



**Consent Calendar Continued....**

**Project Development (Cont.)**

18. **Cooperative Agreement No. 06-036 Amendment No. 3 with the City of Yucaipa for the construction of the Live Oak Canyon Road/Interstate 10 Freeway Interchange** Pg. 166

1. Approve Amendment No. 3 to Cooperative Agreement No. 06-036 with the City of Yucaipa for the Live Oak Canyon/Interstate 10 Freeway Interchange Project to increase the City of Yucaipa's construction funding contribution by \$1,729,043 and include SANBAG construction funding in the amount of \$300,000.

2. Extend the completion date for Cooperative Agreement No. 06-036 to December 31, 2009. **Garry Cohoe**

**This item was reviewed and unanimously recommended for approval by the Major Projects Committee on September 11, 2008. SANBAG Counsel has reviewed and approved this amendment as to form. (Meeting chaired by John Pomierski)**

19. **Freeway Corridors Toll Feasibility Study** Pg. 172

1. Approve Amendment No. 2 to the following purchase orders to extend the toll feasibility study on I-15 to the Future High Desert Corridor.

a. Purchase Order No. P08208-02 with PB Consult Inc. in the amount of \$280,313..

b. Purchase Order No. P08209-02 with KPMG Corporate Finance LLC in the amount of \$84,000.

c. Purchase Order No. P08209-20 with Nossaman, Guthner, Knox & Elliott LLP in the amount of \$30,000.

2. Approve a loan from the Measure 1990-2010 Valley Freeway Program of \$1,931,389 to:

a. the Measure I 2010-2040 Victor Valley Major/Local Highways Program in the amount of \$240,866;

b. the Measure I 2010-2040 Cajon Program in the amount of \$233,261; and

c. the Measure I 2010-2040 Valley Freeway Program in the amount of \$1,457,262.

3. Approve a budget amendment to the FY 2008/09 budget for an additional \$535,299 in TN 85009000. **Garry Cohoe**

**This item was reviewed by the Mountain Desert Committee on November 21, 2008. The Committee unanimously approved the item for an amount not to exceed \$250,000 for the Victor Valley sub-area, subject to Victor Valley Sub-Area Committee considering the item prior to bringing the item forward to the Board. (Meeting Chaired by Brad Mitzelfelt.) The sub-committee meeting is anticipated to occur prior to the December 3, 2008 Board meeting. A similar item was reviewed by the Strategic Plan Ad Hoc Committee on September 30, 2008 and by the Major Projects Committee on October 9, 2008.**

**Consent Calendar Continued....**

**Project Development (Cont.)**

20. **Construction and Maintenance Agreements with Burlington Northern, Santa Fe Railroad (BNSF) and Caltrans for the Interstate 215 Segments 1 and 2 Project** Pg. 181

1. Approve Agreement No. C09109 with BNSF and Caltrans to construct a new bridge over existing BNSF tracks at Ninth Street. TN 83810000.

2. Approve Agreement No. C09110 with BNSF and Caltrans to construct a new bridge over existing BNSF tracks at Baseline Street. TN 83810000.

3. Approve Agreement No. C09111 with BNSF and Caltrans to construct a new bridge over existing BNSF tracks at 16th Street. TN 83810000. **Garry Cohoe**

**This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. SANBAG Counsel has reviewed and approved the agreement as to form. (Meeting chaired by John Pomierski)**

21. **Design Cooperative Agreement Amendment No. A04-028-02 and C07-191-01 with Caltrans for the combined Connectors Project on SR-210 Segment 11 and Interstate 215 Segment 5 Project** Pg. 243

1. Approve Amendment No. 2 to Contract No. A-04-028 with Caltrans for the combined Connectors Project on SR-210 Segment 11 and I-215 Segment 5 Project in the amount of \$217,000.00

2. Approve Amendment No. 1 to Contract No. C07-191 with Caltrans for the Connectors Project on SR-210 Segment 11 in the amount of \$291,000.00 **Garry Cohoe**

**This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. SANBAG Counsel has reviewed and approved the agreement as to form. (Meeting chaired by John Pomierski)**

**Transportation Programs and Fund Administrations**

22. **Transportation Development Act (TDA) – Article 3 Pedestrian and Bicycle Facilities and Transit Stop Access Improvement Call for Projects** Pg. 270

Authorize the release of TDA Article 3 Biennial Call for Projects for

1) Pedestrian and Bicycle Projects and

2) Transit Stop Access Improvement Projects. **Mike Bair**

**This item was reviewed by the Plans and Programs Committee on November 19, 2008 and unanimously recommended for approval. (Meeting chaired by Mark Nuaimi)**

**Consent Calendar Continued....**

**Transportation Programs and Fund Administration (Cont.)**

**23. Transportation Development Act (TDA) Triennial Performance Audit Pg. 285**

Approve Contract C09056 with Pacific Municipal Consultants (PMC) for conducting the TDA Triennial Performance Audit of the San Bernardino County Transportation Commission and the following transit agencies: Omnitrans, Victor Valley Transit Authority, Mountain Area Regional Transit Authority, Morongo Basin Transit Authority, and the Cities of Barstow and Needles, in the amount not to exceed \$137,540.00 as identified in the Financial Impact Section.  
**Mike Bair**

**This item was reviewed by the Administrative Committee on November 12, 2008 and unanimously recommended for approval. (Meeting chaired by Paul Eaton)**

**24. Proposition 1B Trade Corridor Improvement Funds (TCIF) Revised Baseline Agreements for Grade Separation Projects Pg. 313**

1. Approve the following revised Proposition 1B Trade Corridor Improvement Funds (TCIF) draft Baseline Agreements with the California Transportation Commission (CTC):

- a. South Milliken Avenue Grade Separation Project (Contract No. C09016)
- b. Vineyard Avenue Grade Separation Project (Contract No. C09018)
- c. Archibald Avenue Grade Separation Project (Contract No. C09125)

2. Authorize the Executive Director to execute the final TCIF Baseline Agreements including technical and administrative changes that maybe necessary following CTC staff review. Should any policy issues arise, the Executive Director will consult with Board Officers.  
**Ty Schuiling**

**This item was reviewed and unanimously recommended for approval by the Plans and Programs Policy Committee on November 19, 2008. (Meeting chaired by Mark Nuaimi)**

**Consent Calendar Continued....****Transportation Programs and Fund Administration (Cont.)**

25. **Quarterly Administrative Report on SANBAG Federal Funding Programs** Pg. 336
- 1) Receive report on quarterly reporting and obligation status
  - 2) Adopt a finding of compliance with obligation requirements for all affected agencies. **Ty Schuiling**
- This item was reviewed and unanimously recommended for approval by the Planning and Programming Committee on November 19, 2008 and by the Mountain Desert Committee on November 21, 2008. (Plans and Programs chaired by Mark Nuaimi and Mountain Desert chaired by Brad Mitzelfelt)**
26. **Agreement C09-126 with Caltrans for Allocation of Funds Reserved for Project Planning, Programming, and Monitoring (PPM)** Pg. 342
- Approve Agreement C09-126 with Caltrans for allocation to SANBAG of \$1,200,000, of Regional Share State Transportation Improvement Program (STIP) funds for PPM activities, as specified in the Financial Impact Section. **Ty Schuiling**
- This item was reviewed and unanimously recommended for approval by the Plans and Programs Policy Committee on November 19, 2008. (Meeting chaired by Mark Nuaimi)**
27. **Amendment to Contract 06-038 with Transportation & Energy Solutions, Inc. for Construction Management Services for Tiers 1 and 2 of the San Bernardino Valley Coordinated Traffic Signal System Program** Pg. 350
1. Approve Amendment No. 2 to Contract 06-038 with Transportation & Energy Solutions, Inc. for construction management services for Tiers 1 and 2 of the San Bernardino Valley Coordinated Traffic Signal System Program, increasing the contract amount by \$110,303., for a new total contract amount of \$679,679., and extend the contract completion date to December 31, 2008.
  2. Approve budget amendment to increase Task 70109000 in the amount of \$110,303. Funding source is Caltrans State Highway Operation and Protection Program (SHOPP). **Ty Schuiling**
- This item was reviewed and unanimously recommended for approval by the Plans and Programs Policy Committee on November 19, 2008. (Meeting chaired by Mark Nuaimi)**

## **DISCUSSION ITEMS**

### **Program Support/Council of Governments**

**28. Federal Legislative Update**

Pg. 358

Receive Update from Steve Palmer of Van Scoyoc Associates, Inc. –  
SANBAG's Federal Legislative Advocacy Consultant.

**Jennifer Franco**

**This item has had no prior policy committee review.**

### **Administrative Matters**

**29. Alternate Membership and Participation on Mountain/Desert Committee** Pg. 363

Approve an Amendment to Policy No. 10002 "SANBAG Policy Committee Membership" as it relates to a recommendation from the Mountain/Desert Committee to allow alternates to participate on that committee. **Duane A. Baker**

**This item was reviewed by the Mountain/Desert Committee on October 17, 2008 and recommended for approval (7-4-0). Opposed: Hansberger, Jahn, Harris and Neeb. (Meeting chaired by Brad Mitzelfelt). This item was reviewed by the Administrative Committee on November 12, 2008 and recommended for approval (5-1-0). Opposed: Eaton. (Meeting chaired by Paul Eaton).**

**30. Southern California Association of Governments Regional Council Membership** Pg. 366

***President's Recommendation:***

(1) Reconsider SANBAG being a dues paying member of the Southern California Association of Governments (SCAG) Regional Council as requested by SANBAG President Gary Ovitt;

(2) Direct staff to reactivate SCAG membership through payment of the annual dues assessment of \$25,000; and

(3) Appoint a SANBAG Board Member to represent SANBAG as a Regional Council Member,

***Prior Action and Recommendation:***

Reaffirm the SANBAG Board of Directors action to discontinue SANBAG's membership on the SCAG Regional Council.

**Duane A. Baker**

**This item was originally reviewed and recommended for approval by the Administrative Committee to not be a dues-paying member of the SCAG Regional Council on August 13, 2008. (Meeting chaired by Paul Eaton.) This item was originally reviewed and recommended for approval by the Board of Directors to not be a dues-paying member of the SCAG Regional Council on October 1, 2008. (Meeting chaired by Gary Ovitt)**

**Discussion Items Continued....**

**Project Development**

31. **Contract No. C09-100 with DMJM+HARRIS, Inc. for construction engineering support on I-215, Segments 1 and 2** Pg. 368

Approve Sole Source Contract No. C09-100 with DMJM+HARRIS, Inc. for construction engineering support on I-215, Segments 1 and 2 in the amount of \$400,000 as detailed in the Financial Impact Section. TN 83809000. **Garry Cohoe**

**This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. This item has been reviewed by SANBAG Counsel. (Meeting chaired by John Pomierski)**

**Other Matters**

32. **Consent Calendar Items Pulled for Discussion**

Items pulled from the consent calendar shall be taken under this item in the order they were presented on the calendar.

**Comments from Board Members**

**Brief Comments from Board of Directors**

**Public Comment**

**Brief Comments by the General Public**

**ADJOURNMENT**

**Additional Information**

**Agency Reports/Committee Memberships**

Commuter Rail Report Pg. 380

Mayor Pro Tem Patricia Gilbreath

South Coast Air Quality Management Report Pg. 383

Mayor Dennis Yates

Mobile Source Air Pollution Reduction Review Committee (MSRC) Pg. 385

Council Member Gwenn Norton-Perry

**SCAG Committees**

Pg. 389

SCAG Regional Council

SCAG Policy Committees

Community, Economic and Human Development

Energy and Environment

Transportation and Communications

**SANBAG Policy Committees**

Pg. 390

**Acronym List**

Pg. 393

Complete packages of this agenda are available for public review at the SANBAG offices and our website: [www.sanbag.ca.gov](http://www.sanbag.ca.gov). Staff reports for items may be made available upon request. For additional information call (909) 884-8276.

## Meeting Procedures and Rules of Conduct

### **Meeting Procedures**

The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

### **Accessibility**

The SANBAG meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk's telephone number is (909) 884-8276 and office is located at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, CA.

**Agendas** – All agendas are posted at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino at least 72 hours in advance of the meeting. Complete packages of this agenda are available for public review at the SANBAG offices and our website: [www.sanbag.ca.gov](http://www.sanbag.ca.gov). Staff reports for items may be made available upon request. For additional information call (909) 884-8276.

**Agenda Actions** – Items listed on both the "Consent Calendar" and "Items for Discussion" contain suggested actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors.

**Closed Session Agenda Items** – Consideration of closed session items *excludes* members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.

**Public Testimony on an Item** – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a "Request to Speak" form, provided at the rear of the meeting room, and present it to the SANBAG Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for *each* item when an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

**Agenda Times** – The Board is concerned that discussion take place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

**Public Comment** – At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject within the Board's authority. *Matters raised under "Public Comment" may not be acted upon at that meeting. The time limits established in "Public Testimony on any Item" still apply.*

**Disruptive Conduct** – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive conduct includes addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, or otherwise preventing the Board from conducting its meeting in an orderly manner. *Please be aware that a NO SMOKING policy has been established for meetings. Your cooperation is appreciated!*



**SANBAG General Practices for Conducting Meetings  
of  
Board of Directors and Policy Committees**

**Basic Agenda Item Discussion.**

- The Chair announces the agenda item number and states the subject.
- The Chair calls upon the appropriate staff member or Board Member to report on the item.
- The Chair asks members of the Board/Committee if they have any questions or comments on the item. General discussion ensues.
- The Chair calls for public comment based on “Request to Speak” forms which may be submitted.
- Following public comment, the Chair announces that public comment is closed and asks if there is any further discussion by members of the Board/Committee.
- The Chair calls for a motion from members of the Board/Committee.
- Upon a motion, the Chair announces the name of the member who makes the motion. Motions require a second by a member of the Board/Committee. Upon a second, the Chair announces the name of the Member who made the second, and the vote is taken.

**The Vote as specified in the SANBAG Bylaws.**

- Each member of the Board of Directors shall have one vote. In the absence of the official representative, the alternate shall be entitled to vote. (Board of Directors only.)
- Voting may be either by voice or roll call vote. A roll call vote shall be conducted upon the demand of five official representatives present, or at the discretion of the presiding officer.

**Amendment or Substitute Motion.**

- Occasionally a Board Member offers a substitute motion before the vote on a previous motion. In instances where there is a motion and a second, the maker of the original motion is asked if he would like to amend his motion to include the substitution or withdraw the motion on the floor. If the maker of the original motion does not want to amend or withdraw, the substitute motion is not addressed until after a vote on the first motion.
- Occasionally, a motion dies for lack of a second.

**Call for the Question.**

- At times, a member of the Board/Committee may “Call for the Question.”
- Upon a “Call for the Question,” the Chair may order that the debate stop or may allow for limited further comment to provide clarity on the proceedings.
- Alternatively and at the Chair’s discretion, the Chair may call for a vote of the Board/Committee to determine whether or not debate is stopped.
- The Chair re-states the motion before the Board/Committee and calls for the vote on the item.

**The Chair.**

- At all times, meetings are conducted in accordance with the Chair’s direction.
- These general practices provide guidelines for orderly conduct.
- From time-to-time circumstances require deviation from general practice.
- Deviation from general practice is at the discretion of the Board/Committee Chair.

**Courtesy and Decorum.**

- These general practices provide for business of the Board/Committee to be conducted efficiently, fairly and with full participation.
- It is the responsibility of the Chair and Members to maintain common courtesy and decorum.

*Adopted By SANBAG Board of Directors January 2008*



## Important Things to Know for ... December 2008

**SANBAG Meetings – Cancelled:**

None

**SANBAG Meetings – Scheduled:**

SCAG Delegates	Dec. 3	After Board Mtg.	The Super Chief
Administrative Committee	Dec. 10	9 a.m.	The Super Chief
SCRRA Delegates Briefing	Dec. 10	10:30 a.m.	Casa Del Desierto
Major Projects Committee	Dec. 11	9 a.m.	The Super Chief
Plans and Programming Committee	Dec. 17	12 noon	The Super Chief
Commuter Rail Committee	Dec. 18	12 noon	The Super Chief
Mountain-Desert Committee	Dec. 19	9 a.m.	Town of Apple Valley

**Other Meetings:** None

For additional information, please call SANBAG at (909) 884-8276

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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
 ■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

### AGENDA ITEM: 1

**Date:** December 3, 2008

**Subject:** Information Relative to Possible Conflict of Interest

**Recommendation\*:** Note agenda items and contractors/subcontractors which may require member abstentions due to possible conflicts of interest.

**Background:** In accordance with California Government Code 84308, members of the Board may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Contractor/Agents	Subcontractors
8	06-021a-02	Armada Transport, Inc., d/b/a Armada Towing <i>Mohammed Hassan</i>	None
8	06-042-02	Pepe's Towing Service, Inc. <i>Manuel Acosta</i>	None
19	P08208-02	PB Consult Inc. <i>Kent Olsen</i>	Parsons Stantec

\*

*Approved  
 Board of Directors*

Date: \_\_\_\_\_

Moved: \_\_\_\_\_ Second: \_\_\_\_\_

In Favor: \_\_\_\_\_ Opposed: \_\_\_\_\_ Abstained: \_\_\_\_\_

Witnessed: \_\_\_\_\_

19	P08209-02	KPMG Corporate Finance LLC <i>Andy Garbatt</i>	None
19	P08210-02	Nossaman, Guthner, Knox & Elliott LLP <i>Corey Boock</i>	None
20	C09109	Burlington Northern Santa Fe Railroad (BNSF) <i>Melvin Thomas</i>	None
20	C09110	Burlington Northern Santa Fe Railroad (BNSF) <i>Melvin Thomas</i>	None
20	C09111	Burlington Northern Santa Fe Railroad (BNSF) <i>Melvin Thomas</i>	None
23	C09056	Pacific Municipal Consultants <i>Philip O. Carter</i>	None
27	06-038-02	Transportation & Energy Solutions, Inc. <i>Nathaniel Behura, President</i>	None
31	C09-100	DMJM+Harris <i>Vic Martinez</i>	Lin & Nascimento Engineering (LAN) Associated Engineers Earth Mechanics Kleinfelder LIN Consultants STB Landscape

**Financial Impact:** This item has no direct impact on the budget.

**Reviewed By:** This item is prepared monthly for review by the Board of Directors and Policy Committee members.

**BOARD OF DIRECTORS ATTENDANCE RECORD - 2008**

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Gary Ovitt</b> Board of Supervisors	X	X	X	X	X	X	X	X		X	X	
<b>Brad Mitzelfelt</b> Board of Supervisors	X	X	X	X	X		X	X	X	X		
<b>Paul Biane</b> Board of Supervisors		X		X	X	X				X	X	
<b>Dennis Hansberger</b> Board of Supervisors	X	X		X	X		X	X	X		X	
<b>Josie Gonzales</b> Board of Supervisors	X		X	X	X	X	X	X	X	X		
<b>Jim Nehmens</b> City of Adelanto	X	X	X									
<b>Charley Glasper</b> City of Adelanto					X	X	X	X	*	X	X	
<b>Rick Roelle</b> Town of Apple Valley	X	X	X	X	X	X		X	X	X	X	
<b>Lawrence Dale</b> City of Barstow	X	X	X	X	X	X	X	X	X	X	X	
<b>Bill Jahn</b> City of Big Bear Lake	X	X			X	X	X	X		X	X	
<b>Dennis Yates</b> City of Chino	X	X	X		X	X	X	X	X		X	
<b>Gwenn Norton-Perry</b> City of Chino Hills		X	X	X	X		*				X	
<b>Kelly Chastain</b> City of Colton	X	X	X	X	X	*	*	X	X	X	X	
<b>Mark Nuaimi</b> City of Fontana	X	X	X		X	X	X	X	X	X	X	
<b>Bea Cortes</b> City of Grand Terrace	X	X	X	X	X	X	X	X	X	X	X	
<b>Mike Leonard</b> City of Hesperia	X	X	X	X	X	X	X		X	X	X	
<b>Larry McCallon</b> City of Highland	X	X	X		X	X	*	*	X	X	X	

X = member attended meeting. \* = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.

# BOARD OF DIRECTORS ATTENDANCE RECORD - 2008

Name	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
<b>Robert Christman</b> City of Loma Linda	X	X		X	X	X	X	X	X	X	X	X
<b>Rhodes 'Dusty' Riggsby</b> City of Loma Linda								X	X	X	X	X
<b>Paul Eaton</b> City of Montclair	X	X	X	X	X	X	X	X	X	X	X	X
<b>Rebecca Valentine</b> City of Needles		X	X	X	X	X	X	X	X	X	X	X
<b>Paul Leon</b> City of Ontario	X	X	X	X	X	*	X	X	X	X	X	X
<b>Diane Williams</b> City of Rancho Cucamonga	X	X	X	X	X	X	X	X	X	X	X	X
<b>Pat Gilbreath</b> City of Redlands	X	X	X	X	X	X	X	X	X	X	X	X
<b>Grace Vargas</b> City of Rialto	X	X	X		X		X	*	X			
<b>Patrick Morris</b> City of San Bernardino	X	X		X	X	X		X	X	X	X	
<b>Jim Harris</b> City of Twentynine Palms		X	X	X	X	X	X	X	X	X	X	
<b>John Pomierski</b> City of Upland	X	X	X		X	X		X	X			
<b>Mike Rothschild</b> City of Victorville	X	X	X	X	X	X	X	X	X	X	X	
<b>Dick Riddell</b> City of Yucaipa	X	X	X	X	X	X	X	X	X	X	X	
<b>Chad Mayes</b> Town of Yucca Valley	X	X	*	*								
<b>William Neeb</b> Town of Yucca Valley					X	X	X	X	X	X	X	
<b>Ray Wolfe</b> Ex-Official Member										X	X	
<b>Michael Perovich</b> Ex-Official Member	X	X		X	X	Karla Sutliff	Karla Sutliff	Karla Sutliff	Karla Sutliff			

X = member attended meeting.

\* = alternate member attended meeting.

Empty box = Did not attend meeting

Crossed out box = not a Board Member at the time.

# BOARD OF DIRECTORS ATTENDANCE RECORD - 2007

Name	Jan	Feb	March	April	May	May 9 <sup>th</sup> Special Board Mtg	June	July	July 19 <sup>th</sup> Special Board Mtg	Aug	August 15 <sup>th</sup> Special Board Mtg	Sept	Oct	Nov	Dec
<b>Gary Ovitt</b> Board of Supervisors	X	X		X	X		X	X		X	X	X	X		X
<b>Brad Mitzelfelt</b> Board of Supervisors	X	X			X		X			X	X	X	X		X
<b>Paul Biane</b> Board of Supervisors	X	X		X	X	X	X	X	X	X	X	X	X	X	X
<b>Dennis Hansberger</b> Board of Supervisors	X	X	X	X	X	X	X	X	X	X	X	X		X	X
<b>Josie Gonzales</b> Board of Supervisors		X	X		X	X	X	X	X	X	X	X			X
<b>Jim Nehmens</b> City of Adelanto	X	X	X	X	X		X	X		X	X		X	X	X
<b>Rick Roelle</b> Town of Apple Valley	X	X	X	X	X	X	X	X	*		X	X	X	X	X
<b>Lawrence Dale</b> City of Barstow	X	X	X		X	X	X	X	X	X	X	X	X	X	X
<b>Bill Jahn</b> City of Big Bear Lake		X	X	X	X	X	X	X		X		X	X	X	X
<b>Dennis Yates</b> City of Chino	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Gwenn Norton-Perry</b> City of Chino Hills			X	X	X	X			X	X	X			X	*
<b>Kelly Chastain</b> City of Colton	X	X	X	X		X	X		X	X	X	X	X	*	X
<b>Mark Nuaimi</b> City of Fontana	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Bea Cortes</b> City of Grand Terrace	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Mike Leonard</b> City of Hesperia		X	X		X	X	X	X	X	X	X		X	X	X

X = member attended meeting. \* = alternate member attended meeting. Empty box = Did not attend meeting. Crossed out box = not a Board Member at the time.

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# BOARD OF DIRECTORS ATTENDANCE RECORD - 2007

Name	Jan	Feb	March	April	May	May 9 <sup>th</sup> Special Board Mtg	June	July	July 19 <sup>th</sup> Special Board Mtg	Aug	August 15 <sup>th</sup> Special Board Mtg	Sept	Oct	Nov	Dec
<b>Larry McCallon</b> City of Highland	X	X	X	*	X	X	X	X	X	X	X	X	X	X	X
<b>Robert Christman</b> City of Loma Linda	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Paul Eaton</b> City of Montclair	X	X	X	X	X	X	*	X	X	X	X	X	X	X	X
<b>Rebecca Valentine</b> City of Needles		X	X	X	X	X	X	X		X	X	X	X	X	X
<b>Paul Leon</b> City of Ontario	X	X	X	X	X	X		X	X	X	X	X	X	X	X
<b>Diane Williams</b> City of Rancho Cucamonga	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Pat Gilbreath</b> City of Redlands	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Grace Vargas</b> City of Rialto	X	X	X	*	X	X	X	*	X	*	X	X	X	X	X
<b>Patrick Morris</b> City of San Bernardino	X	X	X	X	X	X	X	X	X		X	X	X	X	X
<b>Jim Harris</b> City of Twentynine Palms	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>Kevin Cole</b> City of Twentynine Palms	X	X	X			X	X	X						X	X
<b>John Pomierski</b> City of Upland	X	X			X		X	X	X	X	X	X		X	X
<b>Mike Rothschild</b> City of Victorville	X	X	X	X	*	*	X	X	X	X	X	X	X	X	X
<b>Dick Riddell</b> City of Yucaipa	X	X		X	X		X	X	X	X	X	X	X	X	X
<b>Chad Mayes</b> Town of Yucca Valley	*		X	X	X		X	X	X	X	X	X	X	X	X
<b>Michael Perovich</b> Ex-Official Member	X	X	X	X	X	Paul Engstrom	X	Syed Raza	X	X	Ernest Figueroa	X	X	X	Patty Romo

X = member attended meeting.

\* = alternate member attended meeting.

Empty box = Did not attend meeting

Crossed out box = not a Board Member at the time.

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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 3

**Date:** December 3, 2008

**Subject:** Procurement Report for October 2008

**Recommendation:**\* Receive Monthly Procurement Report.

**Background:** The Board of Directors approved the Contracting and Procurement Policy (Policy No. 11000) on January 3, 1997. The Executive Director, or designee, is authorized to approve Purchase Orders up to an amount of \$25,000. All procurements for supplies and services approved by the Executive Director, or his designee, in excess of \$5,000 shall be routinely reported to the Administrative Committee and to the Board of Directors.

Attached are the purchase orders in excess of \$5,000 to be reported to the Board of Directors for the month of October 2008.

**Financial Impact:** This item imposes no impact on the FY 2008/2009 Budget. Presentation of the monthly procurement report will demonstrate compliance with the Contracting and Procurement Policy (Policy No. 11000).

**Reviewed By:** This item was reviewed by the Administrative Committee on November 12, 2008 and unanimously recommended for approval. (*Meeting chaired by Paul Eaton*)

**Responsible Staff:** William Stawarski, Chief Financial Officer

*Approved  
Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

# **PURCHASE ORDERS ISSUED FOR OCTOBER 2008**

	Vendor	Purpose	Sole Source Y/N	Amount
P09CAC	Crawford Technical Service	Third Party Administrator Services	No	20,000.00
P09PBP	Postage By Phone	FY 08/09 Blanket Purchase Order for postage for the postage meter	No	20,000.00
P09087	La Jolla Institute	Facilitator for the Strategic Planning Retreat	Yes – This company has unique experience in conducting Board Workshops with Southern California regional transportation agencies during the past year.	10,000.00
P09103	TH Enterprises, Inc.	New Adobe Acrobat Standard 9.0 Licenses	No – per contract 05-034-3	6,101.30
P09104	Southern California Association of Governments	TCIF Working Group Follow-Up Support Tasks	No - Intergovernmental	8,125.00
P09105	TH Enterprises, Inc.	Purchase and Install New Server for EDEN Financial System	No – Per contract 05-034-3	23,430.00
P09112	Inland Empire Economic Partnership	2008 Membership Dues	No	7,000.00
			<b>TOTAL PURCHASE ORDERS ISSUED</b>	<b>\$94,656.30</b>

- 
- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies
- 

## *Minute Action*

### AGENDA ITEM: 4

**Date:** December 3, 2008

**Subject:** 2009 Board of Directors and Policy Committee Master Calendar

**Recommendation:\*** Approve the 2009 Board of Directors and Policy Committee Master Calendar

**Background:** The SANBAG Board of Directors and policy committees have established regular meeting schedules. It has been the practice to modify meeting dates and times only when meetings must be rescheduled due to conflicts with holidays or other major meetings which impacted SANBAG's ability to meet quorum requirements. Although a monthly schedule is adopted, it is acknowledged that when there are not sufficient business items to require a meeting, the meeting will be cancelled. SANBAG staff, however, has been directed to make every effort to minimize deviation from the regular schedule to insure continuity of meetings and participation.

A proposed 2009 master calendar of SANBAG meetings is attached for approval. The Administrative Committee, Mountain/ Desert Committee, Plans and Programs Committee, Major Projects Committee and Commuter Rail Committee have reviewed and approved their meeting schedule. The final master calendar will be distributed to all Board Members, requesting that they calendar SANBAG meetings for the coming year.

Advance confirmation of meetings or cancellation notices are part of SANBAG's standard procedure for meeting preparation.

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*Approved*  
*San Bernardino Associated Governments*  
*Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*                      *Second:*

*In Favor:*      *Opposed:*      *Abstained:*

*Witnessed:* \_\_\_\_\_

Board of Directors  
December 3, 2008  
Page 2

***Financial Impact:*** Approval of the master calendar has no impact upon the SANBAG budget. Activities to support the Board and policy committee activities are consistent with the adopted budget.

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by all SANBAG Policy Committees.

***Responsible Staff:*** Duane Baker  
Director of Management Services

# January 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7 Board	8	9	10
11	12	13	14 Admin.	15 Major Projects	16 Mt/Desert	17
18	19 MLK Holiday	20	21 Plans and Programs	22 Commuter Rail	23	24
25	26	27	28	29	30	31

# February 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 Board	5	6	7
8	9	10	11 Admin	12 Major Projects	13	14
15	16 President's Day	17	18 Plans/Programs	19	20 Mt/Desert	21
22	23	24	25	26	27	28

# March 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 Board	5	6	7
8	9	10	11 Admin	12 Major Projects	13	14
NACO Legisl. Conf.	NACO Legisl. Conf.	NACO Legisl. Conf.	NACO Legisl. Conf.	19 Commuter Rail	20 Mt/Desert	NACO Legisl.
15	16	17	18 Plans and Programs	19 Commuter Rail	20 Mt/Desert	21
22	23	24	25	26 City/County Conf.	27 City/County Conf.	28
29	30	31				

# April 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 Board	2	3	4
5	6	7	8 Admin.	9 Major Projects	10	11
12	13	14	15 Plans/Programs League Legislative ActionDays	16 League Legislative ActionDays	17 Mt/Desert	18
19	20	21	22	23	24	25
26	27	28	29	30		



# May 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6 Board	7	8	9
10	11	12	13 Admin.	14 Major Projects	15 Mt/Desert	16
17	18	19	20 Plans/Programs	21 Commuter Rail	22	23
24	25 Memorial Day	26	27 League Mayors/Council Forum	28 League Mayors/Council Forum	29 League Mayors/Council Forum	30 League Mayors/Council Forum
31						

# June 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3 Board	4	5	6
7	8	9	10 Admin	11 Major Projects	12	13
14	15	16	17 Plans/Programs	18	19 Mt/Desert	20
21	22	23	24	25	26	27
28	29	30				

# July 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 Board	2	3	4
5	6	7	8 Admin	9 Major Projects	10	11
12	13	14	15 Plans/Programs	16 Commuter Rail	17 Mt/Desert	18
19	20	21	22	23	24	25 NACO Annual Conf.
26 NACO Annual Conf.	27 NACO Annual Conf.	28 NACO Annual Conf.	29	30	31	

# August 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5 Board	6	7	8
9	10	11	12 Admin	13 Major Projects	14	15
16	17	18	19 Plan/Programs	20	21 Mt/Desert	22
23	24	25	26	27	28	29
30	31					

# September 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2 Board	3	4	5
6	7 Labor Day	8	9 Admin. Plans/Programs	10 Major Projects Commuter Rail	11	12
13	14	15	16	17	18	19
			League Annual Conf.	League Annual Conf.	League Annual Conf.	
20	21	22	23	24	25 Mt/Desert	26
27	28	29	30			

# October 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7 Board	8	9	10
11	12	13	14 Admin.	15 Major Projects	16 Mt/Desert	17
18	19	20	21 Plans and Programs	22	23	24
25	26	27	28	29	30	31

# November 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 Board	5	6	7
8	9	10	11 <b>Veteran's Day</b>	12 Major Projects	13	14
15	16	17	18 <b>Admin. (11:00 a.m.)</b> Plans /Programs	19 Commuter Rail	20 Mt/Desert	21
22	23	24	25	26 Thanksgiving	27 Thanksgiving	28
29	30					

# December 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2 Board	3	4	5
6	7	8	9 Admin.	10 Major Projects	11	12
13	14	15	16 Plans/ Programs	17	18 Mt/Desert	19
20	21	22	23	24	25	26
				Christmas Eve	Christmas	
27	28	29	30	31	January 1, 2010	
				New Year's Eve	New Year's Day	



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 5

**Date:** December 3, 2008

**Subject:** Executive Director Authority for Purchase Orders

**Recommendation:\*** Approve an amendment to Policy No. 11000 increasing the Executive Director's authority for approving Purchase Orders from \$25,000 to \$50,000.

**Background:** In 1997, the SANBAG Board of Director approved Policy No. 11000, "Contracting and Procurement Policy". One of the provisions of this policy was to establish a limit to the amount of any Purchase Order that the Executive Director could sign without approval by the Board of Directors. That limit is currently \$25,000.

In the eleven years since this policy was first adopted, there have been no changes to this limit. Though the cost of providing services has escalated over time, the Executive Director has the same authority level. This means that an increasing number of routine purchase orders have to come before the Board of Directors for approval than had in the past simply because of inflation.

It is proposed that this limit be changed from \$25,000 to \$50,000. This change would account for inflation but also bring SANBAG more in line with other similar agencies. Specifically, the request is to amend Policy No. 11000 Section IV- E as follows:

*Approved*  
*Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

**"E. Purchase Orders**

1. The purchase order procedures are developed for efficiency in processing transactions where services and supplies are clearly specified and provide for expedient delivery of products and services. Purchase orders are binding documents that establish a vendor's acceptance of the offer and mutually agreed upon terms and conditions, expected performance, and consideration for performance.
2. Products and services for amounts less than ~~\$25,000~~ \$50,000 in any ~~one-year period~~ fiscal year, other than purchase and lease of real property and employment contracts, may be purchased using purchase order procedures.
3. The Executive Director, or his designee, is authorized to approve Purchase Orders up to an amount of ~~\$25,000~~ \$50,000. Purchase Orders over ~~\$25,000~~ \$50,000 or exceeding a cumulative amount of ~~\$25,000~~ \$50,000 in any ~~one-year period~~ fiscal year must be approved by the Board of Directors.
4. All procurements for supplies and services approved by the Executive Director, or his designee, in excess of \$5,000 shall be routinely reported to the Board of Directors."

For comparison purposes, a table is shown below with approval authorities for executives in San Bernardino County and other council of governments or transportation agencies in Southern California:

Agency	Purchase Authority of Executive Director
SANBAG	\$25,000
RCTC	\$50,000
OCTA	\$100,000
LACMTA	\$200,000
SANDAG	\$100,000
VCTC	\$50,000
WRCOG	\$50,000
San Bernardino County	\$50,000 – consulting \$100,000 - services

The increase in authority being requested is consistent with similar organizations, is consistent with best business practices and will contribute to the efficient management of SANBAG.

**Financial Impact:** This item has no financial impact.

**Reviewed By:** This item was reviewed and unanimously recommended for approval by the Administrative Committee on November 12, 2008. (*Meeting chaired by Paul Eaton*)

**Responsible Staff:** Duane A. Baker, Director of Management Services

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 6

**Date:** December 3, 2008

**Subject:** San Bernardino County Economic Recovery Corporation

- Recommendation:**
1. Support the concept and further definition of the San Bernardino Economic Recovery Corporation (SBERC) which will work to address the impact of the housing market decline on our local economy.
  2. Direct SANBAG staff to work with public and private partners in facilitating the development of this organization.
  3. Authorize the expenditures from Task No. 49009000 (Council of Governments New Initiatives) to fund SANBAG staff and consultant work in an amount not to exceed \$50,000.

**Background:** San Bernardino County has been hit particularly hard with foreclosure activity and faces the most difficult economic times in over four decades. A significant challenge facing local government is how to retain the value of real estate assets. A significant loss of value has a negative impact on the local governments' ability to provide essential services.

Supervisor Paul Biane; Mark Dowling, San Bernardino County Economic Development Administrator; and Steve PonTell, LaJolla Institute; gave a presentation to the SANBAG City Managers Technical Advisory Committee on October 16, 2008. This presentation demonstrated the

*Approved*  
*Board of Directors*

*Date:* \_\_\_\_\_

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

requirements of the Housing & Economic Recovery Act of 2008 and introduced concepts for a private-public partnership to acquire and resell foreclosed properties in the Inland Empire. Consistent with the priorities set in the September 2008 SANBAG Board workshop, SANBAG is serving to further facilitate discussion and disseminate information on methods to deal with the high rate of foreclosures in this County.

The proposed collaboration, the San Bernardino County Economic Recovery Corporation (SBCERC), will be a public-private partnership organized and designed to engage in and facilitate activities such as raising capital; negotiating with loan servicing companies, lenders, and governmental agencies; and coordinate local governmental initiatives to stabilize neighborhoods and leverage private resources. Understanding that regional areas are different and broader in many ways, the SBERC will be better positioned to develop solutions to the housing impact as our local communities understand more intimately the dynamics of the markets in which they operate and the nature of their specific local competitive requirements.

SBERC's efforts could help to stabilize communities, minimize fiscal impact to taxpayers, and facilitate collaboration on comprehensive solutions focusing on preserving asset valuations and promoting the strong foundations of homeownership.

It has been suggested that an organization independent of SANBAG would be created, led by a board with 5-7 members composed of 2-3 public, and 3-4 private sector leaders. In conjunction with the board, a team of consultants from key public and private sectors would be retained to collaborate with local stakeholders and steer the SBERC in developing a comprehensive work program to achieve desired outcomes.

The work program may include:

- Working with county, city, and private counsel to create the legal framework for the SBCERC;
- Working with local governmental technical staff to develop housing programs that will have statistically significant impacts;
- Establishing a dialog with all relevant agencies such as Fannie Mae, Freddie Mac, FDIC, Treasury Department, and HUD;
- Establishing a dialog with key private lenders;
- Creating business models for raising and leveraging capital; and creating the legal and operating structure for the ongoing operation of the SBCERC.

SANBAG has in its budget over \$400,000 earmarked for Council of Government New Initiatives in Task No. 49009000. These funds were accumulated over a six year period from the general membership dues of our member jurisdictions. The general membership dues for FY 2008/09 are \$73,303.

To ensure the SANBAG Board has the tools it needs to respond to the financial crisis impacting all the jurisdictions in San Bernardino County, staff is recommending support of the concept and authority to expend staff time and financial resources for consulting work to further define the steps necessary for the formation of the San Bernardino Economic Recovery Corporation or other programs to help our region recover from the financial crisis.

***Financial Impact:*** Approval of this item will allow staff to expend \$50,000 from Task No. 49009000. There is sufficient fund balance in this Task to accommodate this work effort.

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Administrative Committee on November 12, 2008. (*Meeting chaired by Paul Eaton*)

***Responsible Staff:*** Duane A. Baker, Director of Management Services

## *Minute Action*

### AGENDA ITEM: 7

**Date:** December 3, 2008

**Subject:** Construction Manager and Project Controls-Contract Manager Position  
Reclassifications

**Recommendation:\***

1. Approve adjusting the Salary Ranges for the Project Controls-Contract Manager position from Salary Range 22-25 to Salary Range 28-32.
2. Approve adjusting the Salary Ranges for the Construction Manager from Salary Range 26-29 to Salary Range 28-32.
3. Authorize staff to begin recruiting for the Project Controls-Contract Manager and Construction manager positions pending final approval by the Board of Directors.

**Background:** In May 2007 the Board of Directors approved the Executive Director's organizational realignment plan. In that plan the positions of Construction Manager and Project Controls-Contract Manager were approved to be converted from contract positions to staff positions. These positions are part of the strategy to enhance SANBAG's in-house capabilities to manage construction projects and it prepares the organization for Measure I 2010-2040.

The process to implement this realignment plan has been delayed since its approval in 2007 due to turnover in the position of Director of Freeway

*Approved  
Board of Directors*

*Date:* \_\_\_\_\_

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

Construction. With the Director of Freeway Construction now in place, he has had an opportunity to begin implementing this realignment plan.

The Project Controls-Contracts Manager position will be responsible for development and maintenance of information related to budgeting, expenditures and schedules for professional services and construction contracts; review of contractor invoicing for contract compliance in cooperation with program/project management personnel and finance personnel; and development and adjustment recommendations relative to cash flow management and project scheduling.

When originally approved by the Board, this position was assigned to Salary Ranges 22-25. Salary Range 25 is from \$6,502.95 to \$7,904.38/month. A number of factors require SANBAG to consider adjusting the salary ranges for this position to attract a well qualified pool of candidates. Some of these factors are that the salary ranges for this position were established two years ago and we have revised the job description to add higher function management responsibilities than were in the first job description and to require at least two more years of experience. Another factor is our ability to compete for these technical professions in the marketplace. After surveying other comparable agencies, it was found that the current salary range was the lowest among comparable agencies and below the average. The average salary range for a comparable position is from \$7,576.21 to \$10,531.13/month. Below is the table showing comparable positions and salaries in other agencies:

**Project Controls-Contract Manager**

Agency - Position Title	A Step	E Step
OCTA - Section Mgr. III - Project Controls	6,370.00	9,724.00
LAMTA - Sr. Project Ctrl Manager	7,902.83	11,852.50
RCTC - Capital Project Manager	7,910.00	10,678.00
CALTRANS - Sr. Transportation Engineer	8,122.00	9,870.00
<b>Average</b>	<b>7,576.21</b>	<b>10,531.13</b>
<b>Median</b>	<b>7,906.42</b>	<b>10,274.00</b>
SANBAG - Existing	5,617.49	7,904.38
SANBAG - Proposed	7,527.98	11,122.25

It is recommended that the salary range for this position be adjusted to Salary Ranges 28 – 32. Salary Range 28 is from \$7,527.98 to \$9,150.31/month and Salary Range 32 is from \$9,150.31 to \$11,122.25/month. This adjustment would

make SANBAG more competitive in the marketplace to attract the staff we need to establish our in-house project management team.

The Construction Manager is responsible for day-to-day management of multiple freeway and railway grade separation projects using a variety of construction, construction management, materials testing, and surveying contractors. The Construction Manager directs and advises consultant construction management staff, including resident engineers, inspectors, and other members of construction management services teams on all activities, including but not limited to construction contract change orders, claims resolution, and interaction with various technical disciplines.

When originally approved by the Board, the Construction Manager position was assigned to Salary Ranges 26 - 29. Salary Range 29 is from \$7,904.38 to \$9,607.82/month. As with the Project Control-Contracts Manager, a number of factors require SANBAG to consider adjusting the salary ranges for the Construction Manager position to attract a well qualified pool of candidates. Some of these factors are that the salary ranges for this position were established two years ago and we have revised the job description to add higher function management responsibilities than were in the first job description. Another factor is our ability to compete for these technical professions in the marketplace. After surveying other comparable agencies, it was found that the current salary range was the lowest among comparable agencies and below the average. The average salary range for a comparable position is from \$7,957.10 to \$11,141.69/month. Below is the table showing comparable positions and salaries in other agencies:

**Construction Manager**

Agency - Position Title	A Step	E Step
OCTA - Program Mgr. Development	7,893.58	12,166.25
LAMTA-Sr. Construction Mgr.	7,902.83	11,852.50
RCTC-Capital Project Manager	7,910.00	10,678.00
CALTRANS - Sr. Transportation Eng.	8,122.00	9,870.00
<b>Average</b>	<b>7,957.10</b>	<b>11,141.69</b>
<b>Median</b>	<b>7,906.42</b>	<b>11,265.25</b>
SANBAG - Existing	6,828.10	9,607.82
SANBAG - Proposed	7,527.98	11,122.25



It is recommended that the salary range for this position be adjusted to Salary Ranges 28 – 32. Salary Range 28 is from \$7,527.98 to \$9,150.31/month and Salary Range 32 is from \$9,150.31 to \$11,122.25/month. This adjustment would make SANBAG more competitive in the marketplace to attract the staff we need to establish our in-house project management team.

Due to the fact that recruiting for any key position takes several weeks, staff would like the authorization to start the recruitment process for these positions. The recruitment would be made pending final approval of the Board of Directors for the adjusted salary ranges. This matter would be before the Board of Directors prior to interviews taking place for these positions.

**Financial Impact:** The salary range of a selected candidate to fill these positions will be based upon the skills and experience of the candidate and cannot be exactly determined at this time. The recommended adjustment can be accommodated within the adopted FY 2008-2009 budget.

**Reviewed By:** This item was reviewed and unanimously recommended for approval by the Administrative Committee on November 12, 2008. (Meeting chaired by Paul Eaton)

**Responsible Staff:** Duane A. Baker, Director of Management Services

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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies
- 

AGENDA ITEM: 8

**Date:** December 3, 2008

**Subject:** Amendments to Contracts to extend Freeway Service Patrol (FSP) services on four Beats for the time period of January 1 through April 30, 2009.

**Recommendations:\*** 1. Amend Contract No. 06-021a with Armada Towing to extend the contract term to April 30, 2009, as well as increase the contract not-to-exceed amount by \$169,688 for a total contract amount of \$1,712,005.14 as identified in the Financial Impact Section below; and

2. Amend Contract No. 06-042 with Pepe's Towing to extend the contract term to April 30, 2009, as well as increase the contract not-to-exceed amount by \$69,993 for a total contract amount of \$648,333 as identified in the Financial Impact section below.

**Background:**

FSP consists of a fleet of tow trucks roaming the freeways for the purpose of assisting motorists with their disabled vehicles during peak periods of congestion. Since the program's inception in January 2006, the FSP Program has demonstrated many benefits by reducing the amount of time a motorist is in unsafe conditions, as well as reducing traffic delay, vehicular emissions and secondary accidents. Since its inception the program has assisted more than 94,000 motorists.

In January of 2006 Armada Towing and Pepe's Towing were selected through a competitive proposal process to provide FSP services on the first four Beats implemented. The four Beats are as follows:

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*Approved*  
*Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*      *Second:*

*In Favor:*      *Opposed:*      *Abstained:*

*Witnessed:* \_\_\_\_\_

- Beat 1 is along Interstate (I) 10 from the Los Angeles County line to Haven Avenue, provided by Armada Towing.
- Beat 2 is along the I-10 from Haven Avenue to Sierra Avenue, provided by Armada Towing.
- Beat 3 is along the I-10 from Sierra Avenue to Waterman Avenue, provided by Pepe's Towing.
- Beat 5 is along the I-15 from the Riverside County line to Baseline Road, provided by Armada Towing.

On November 5, 2008, the Board approved the release of a Request For Proposal C09093 for FSP services on Beats 1, 2, 3 and 5. The Tow Operators that are selected through a competitive process and approved by the Board will begin providing services on May 1 of 2009.

The current contracts which provide FSP services along these four Beats will terminate on December 31, 2008. In order to continue to provide FSP services on these four Beats until the procurement process is complete, an extension of the current contracts is required with Armada Towing and Pepe's Towing.

**Financial Impact:** The contract amendment amounts in the amount of \$239,681 are included in the FY 2008/2009 Budget for the provision of these services, and the source of funds are a combination of State FSP Funds and Department of Motor Vehicle Registration Fees (Call Box funding). TN 70409000

**Reviewed By:** This item was reviewed and unanimously recommended for approval by the Plans and Programs Committee on November 19, 2008. The item has been reviewed by Legal Counsel as to form (*Meeting chaired by Mark Nuaimi*).

**Responsible Staff:** Kelly Lynn, Air Quality/Mobility Program Manager

**SANBAG Contract No. 06-021a-02**

by and between

SAN BERNARDINO ASSOCIATED GOVERNMENTS

and

ARMADA TRANSPORT INC., DBA ARMADA TOWING.

for

FSP TOW SERVICE FOR BEATS 1, 2 AND 5

**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable	Vendor Contract # <u>06-021a-02</u>	Retention:	<input type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID <u>AT5I</u>	<input type="checkbox"/> Yes ____ % <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Amendment

Notes:

Original Contract:	\$ <u>1,542,317.14</u>	Previous Amendments Total:	\$ <u>0</u>
		Previous Amendments Contingency Total:	\$ <u>0</u>
Contingency Amount:	\$ <u>0</u>	Current Amendment:	\$ <u>169,688</u>
		Current Amendment Contingency:	\$ <u>0</u>

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL → \$ 1,712,005.14**

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
<u>704E6021</u>	<u>5553</u>	<u>State Funding 80%</u>	<u>0896</u>	\$ <u>135,750.40</u>
<u>704E6021</u>	<u>5553</u>	<u>SAFE 20%</u>	<u>0860</u>	\$ <u>33,937.60</u>
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date: <u>11/02/05</u>	Contract Start: <u>11/02/05</u>	Contract End: <u>12/31/08</u>
New Amend. Approval (Board) Date: _____	Amend. Start: <u>01/01/09</u>	Amend. End: <u>04/30/09</u>

**If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:**

Approved Budget Authority →	Fiscal Year: <u>08/09</u> \$ <u>169,688</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ <u>0</u>
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Is this consistent with the adopted budget? ☒ Yes ☐ No  
 If yes, which Task includes budget authority? 704E6021  
 If no, has the budget amendment been submitted? ☐ Yes ☐ No

**CONTRACT MANAGEMENT**

**Please mark an "X" next to all that apply:**

☐ Intergovernmental    ☒ Private    ☐ Non-Local    ☒ Local    ☐ Partly Local

Disadvantaged Business Enterprise: ☒ No    ☐ Yes \_\_\_\_ %

Task Manager: Michelle Kirkhoff

Contract Manager: Kelly Lynn

Michelle Kirkhoff    11-10-08  
 Task Manager Signature    Date  
Michelle Kirkhoff    11/10/08  
 Chief Financial Officer Signature    Date

Kelly Lynn    11-13-08  
 Contract Manager Signature    Date

Filename: C06-021a-02

- 
- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority
  - San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies
- 

## **Amendment No. 2 to Contract No. 06-021a**

**By and Between**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**and**

**ARMADA TRANSPORT INC. DBA ARMADA TOWING**

**TOW VENDOR SERVICES FOR FREEWAY SERVICE PATROL BEAT 1, 2 AND 5**

WHEREAS, San Bernardino Associated Governments, hereinafter referred to as "SANBAG" and Armada Transport Inc. DBA Armada Towing, referred to herein as "CONTRACTOR", have previously entered into a contract effective November 2, 2005, wherein SANBAG engaged CONTRACTOR to provide Freeway Service Patrol (FSP) tow services for Beat areas 1, 2 and 5 on Interstate 10 and 15; which contract is hereinafter referred to as the "Contract", and,

WHEREAS, SANBAG and CONTRACTOR desire to amend the Contract to extend the Contract for four additional months (January 1 – April 30, 2009) for CONTRACTOR to perform the agreed upon work and to increase the contract amount;

NOW THEREFORE, SANBAG, and CONTRACTOR agree to amend the Contract as follows:

1. Section 3.4 Term. The first sentence is amended to read as follows:

The term of this Contract shall be from November 2, 2005 through April 30, 2009 for Beat areas 1, 2 and 5 and shall not exceed the total amount of one million seven hundred twelve thousand and five dollars and fourteen cents (\$1,712,005.14), unless earlier terminated as provided herein.

Beat 1 – On the I-10 from Los Angeles County line to Haven  
Beat 2 – On the I-10 from Haven to Sierra  
Beat 5 – On the I-15 from the Riverside County line to Baseline

2. Exhibit B is amended to read as follows:

For the period of performance from January 1, 2006 through April 30, 2009, the CONTRACTOR shall provide two primary FSP vehicles (along with a certified FSP back-up vehicle) for each beat. FSP services hours are from 5:30 a.m. to 8:30 a.m. Monday through Friday, 3 p.m. to 7 p.m. Monday through Thursday, and from 1 p.m. to 7 p.m. on Friday's.

3. All other portions of this Contract shall remain in full force and effect and are incorporated herein by this reference.

IN WITNESS WHEREOF, the authorized parties have below signed and executed this Amendment to the Contract, and shall be effective on the date set forth above:

SAN BERNARDINO ASSOCIATED  
GOVERNMENTS

\_\_\_\_\_  
Gary C. Ovitt, President

ARMADA TRANSPORT INC. DBA  
ARMADA TOWING

\_\_\_\_\_  
Mohammed Hassan, President

APPROVED AS TO LEGAL FORM  
FOR SANBAG

\_\_\_\_\_  
Jean-Rene Basle, SANBAG Counsel

# EXHIBIT "B" COMPENSATION AND PAYMENT AMENDMENT

Amendment to Armada Towing contract #06021a for Beats 1, 2 and 5 (Jan. 1 - April 30, 2009)

Hourly Costs (per truck)	No. of Hours	5% Contingency	Total Hours	Beat 1	Beat 2	Beat 5
Hourly rate per truck (two primary trucks) to cover the time period Jan. 1 - April 30, 2009				\$ 44.80	\$ 44.80	\$ 43.74
Budget amendment for FSP Beats 1, 2 & 5 Jan. 1 - April 30, 2009	606.00	30.30	636.30	\$ 57,012	\$ 57,012	\$ 55,663.52

Beat 1 (along the I-10 from LA County line to Haven)

Beat 2 (along the I-10 from Haven to Sierra)

Beat 5 (along the I-15 from Riverside County line to Baseline)

53 Total Budget Amendment:

\$ 169,688

C06-021a-02

**SANBAG Contract No. 06-042-02**  
by and between  
**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
and  
**PEPE'S TOWING SERVICE, INC.**  
for  
**FSP TOW SERVICE FOR BEAT 3**

**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable	Vendor Contract # <u>06-042-02</u> Vendor ID <u>PTSI</u>	Retention: <input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Original <input checked="" type="checkbox"/> Amendment
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**Notes:**

Original Contract:        \$ <u>578,340.00</u>	Previous Amendments Total:        \$ <u>0</u>
	Previous Amendments Contingency Total:    \$ <u>0</u>
Contingency Amount:    \$ <u>0</u>	Current Amendment:        \$ <u>69,993</u>
	Current Amendment Contingency:    \$ <u>0</u>

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL → \$ 648,333**

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
<u>704E6042</u>	<u>5553</u>	<u>State Funding 80%</u>	<u>0896</u>	\$ <u>55,994.40</u>
<u>704E6042</u>	<u>5553</u>	<u>SAFE 20%</u>	<u>0860</u>	\$ <u>13,998.60</u>
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date: <u>11/02/05</u>	Contract Start: <u>11/02/05</u>	Contract End: <u>12/31/08</u>
New Amend. Approval (Board) Date: _____	Amend. Start: <u>01/01/09</u>	Amend. End: <u>04/30/09</u>

**If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:**

Approved Budget Authority →	Fiscal Year: <u>08/09</u> \$ <u>69,993</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ <u>0</u>
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Is this consistent with the adopted budget?    ☒ Yes    ☐ No

If yes, which Task includes budget authority? 704E6042

If no, has the budget amendment been submitted?    ☐ Yes    ☐ No

**CONTRACT MANAGEMENT**

**Please mark an "X" next to all that apply:**

☐ Intergovernmental    ☒ Private    ☐ Non-Local    ☐ Local    ☐ Partly Local

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Disadvantaged Business Enterprise: ☒ No    ☐ Yes \_\_\_\_\_ %

Task Manager: <u>Michelle Kirkhoff</u>	Contract Manager: <u>Kelly Lynn</u>
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 Task Manager Signature	 Contract Manager Signature
<u>11-13-08</u> Date	<u>11-13-08</u> Date
 Chief Financial Officer Signature	<u>11/18/00</u> Date

Filename: C06-042-02



## **Amendment No. 2 to Contract No. 06-042**

**By and Between**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**and**

**PEPE'S TOWING SERVICE, INC.**

### **TOW VENDOR SERVICES FOR FREEWAY SERVICE PATROL BEAT 3**

WHEREAS, the San Bernardino Associated Governments, hereinafter referred to as "SANBAG" and Pepe's Towing Service, Inc., referred to herein as "CONTRACTOR", have previously entered into a contract effective November 2, 2005, wherein SANBAG engaged CONTRACTOR to provide Freeway Service Patrol (FSP) tow services for Beat area 3 on Interstate 10; which contract is hereinafter referred to as the "Contract", and,

WHEREAS, SANBAG and CONTRACTOR desire to amend the Contract to extend the Contract for four additional months (January 1 – April 30, 2009) for CONTRACTOR to perform the agreed upon work and to increase the contract amount;

NOW THEREFORE, SANBAG, and CONTRACTOR agree to amend the Contract as follows:

1. Section 3.4 Term. The first sentence is amended to read as follows:

The term of this Contract shall be from November 2, 2005 through April 30, 2009 for Beat 3 (I-10 from Sierra to Waterman) and shall not exceed six hundred forty-eight thousand three hundred thirty-three dollars and no cents (\$648,333), unless earlier terminated as provided herein.

2. Exhibit B is amended to read as follows:

For the period of performance from January 1, 2006 through April 30, 2009, the CONTRACTOR shall provide two primary FSP vehicles (along with a certified FSP back-up vehicle), covering Interstate 10 from Sierra to Waterman from 5:30 a.m. to 8:30 a.m. Monday through Friday, 3 p.m. to 7 p.m. Monday through Thursday, and from 1 p.m. to 7 p.m. on Friday's.

3. All other portions of this Contract shall remain in full force and effect and are incorporated herein by this reference.

IN WITNESS WHEREOF, the authorized parties have below signed and executed this Amendment to the Contract, and shall be effective on the date set forth above:

SAN BERNARDINO ASSOCIATED  
GOVERNMENTS

\_\_\_\_\_  
Gary C. Ovitt, President

PEPE'S TOW SERVICE, INC.

  
\_\_\_\_\_  
Manuel Acosta, Secretary

APPROVED AS TO LEGAL FORM  
FOR SANBAG

  
\_\_\_\_\_  
Jean-Rene Basle, SANBAG Counsel

# EXHIBIT "B" COMPENSATION AND PAYMENT AMENDMENT

Amendment to Pepe's Towing contract #06-042 for Beat 3 (Jan. 1 - April 30, 2009)

Hourly Costs (per truck)	No. of Hours	5% Contingency	Total Hours	Beat 1
Hourly rate per truck (two primary trucks) to cover the time period Jan. 1 - April 30, 2009				\$ 55.00
Budget amendment for FSP Beat 3				
Jan. 1 - April 30, 2009	606.00	30.30	636.30	\$ 69,993

Beat 3 (along the I-10 From Sierra to Waterman)

Total Budget Amendment:

\$ 69,993

## *Minute Action*

AGENDA ITEM: 9

**Date:** December 3, 2008

**Subject:** Measure I 2010-2040 Model Project Advancement Agreement (PAA)

**Recommendation:\***

1. Approve and release revised model interagency agreement for reimbursement of eligible costs for projects advanced by member agencies with local (non-SANBAG) funds in the Valley Region.
2. Approve reimbursement for Nexus Study projects for which construction begins after January 31, 2009 through an Advancement Expenditure (AE) process included in the Measure I 2010-2040 Strategic Plan as described below.

**Background:** Following the passage of Measure I 2010-2040 in November 2004, several member agencies indicated an interest in advancing shelf-ready or near-shelf-ready freeway interchange, overcrossing, or arterial projects consistent with the new Expenditure Plan. After several months of consideration, a strategy to advance SANBAG Nexus Study interchange, arterial, and grade separation projects to construction prior to 2010 was approved by the SANBAG Board in December 2005, with the model interagency Project Advancement Agreement approved by the Board in April 2006.

On September 2, 2008, the Board adopted a policy regarding the repayment of Measure I 2010-2040 Project Advancement Agreements for the Valley Interchange and Major Street Programs. The attached

\*

*Approved  
Board of Directors*

*Date:* \_\_\_\_\_

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

draft model interagency Project Advancement Agreement is based on the model agreement approved in April 2006, but also includes the adopted policy for repayment with Measure I 2010-2040 funds. Following approval of the model agreement, each new agreement would be subject to approval by the Board of Directors and the governing body of the sponsoring agency. Approval of this model agreement has no effect on existing agreements.

The Project Advancement process was designed to allow for the reimbursement of Measure I 2010-2040 dollars for expenditures on Nexus Study projects that occur prior to the actual flow of revenue from the new Measure in April 2010. The model Project Advancement Agreement allows for reimbursement on projects that initiate construction no later than January 2009. It is the intent that eligible expenditures on Nexus Study projects for which construction begins after January 2009 be captured under an Advance Expenditure (AE) program. The policies associated with such a program will not be finalized until the approval of the Measure I 2010-2040 Strategic Plan, currently scheduled for April 2009. However, a general framework for the AE process is being prepared as part of the draft Strategic Plan to be released in December 2008.

The AE program will provide reimbursement to local jurisdictions that choose to deliver Nexus Study projects with local resources in advance of an allocation of Measure I funds. The Valley AE program would apply to eligible projects within the Valley Freeway Interchange and the Valley Major Street Programs. Reimbursement would occur at a later time when Measure I funds become available according to the respective policies for the Interchange and Major Street Programs.

The AE program will be operational throughout the Measure I 2010-2040 time period. Local jurisdictions that wish to take advantage of this option would execute an agreement with SANBAG to be reimbursed for the public share of an advanced project's cost at such time as Measure I funds are available through the applicable program. Policies governing the specific requirements and reimbursement schedules will be reviewed and approved through the development of the Strategic Plan. However, staff is requesting acknowledgement that an AE process will be established to reimburse Valley jurisdictions for expenditures incurred on Nexus Study projects after January 31, 2009, unless otherwise covered under the Project Advancement Program. This will provide assurance that a mechanism is available to capture eligible expenditures on Nexus Study projects that are unable to meet the Project Advancement Program deadlines.

***Financial Impact:*** This item has no impact on the Fiscal Year 2008-2009 SANBAG Budget. The long-term impact of the project advancement program is expected to be positive in that significant savings in both construction and right-of-way costs are likely to occur through early delivery of these projects.

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Plans and Programs Policy Committee on November 19, 2008. *(Meeting chaired by Mayor Mark Nuaimi)*

***Responsible Staff:*** Philip Chu, Transportation Programming Analyst  
Wendy Li, Chief of Programming  
Ty Schuiling, Director of Planning and Programming

**Draft Model Interagency Project Advancement Agreement**

**COOPERATIVE AGREEMENT NO.  
BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY**

**AND**

**FOR**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ by and between the San Bernardino County Transportation Authority (hereinafter referred to as "SANBAG") and \_\_\_\_\_ (hereinafter referred to as "CITY").

**WITNESSETH**

WHEREAS, the SANBAG Nexus Study and the Measure I 2010-2040 Expenditure Plan identify freeway interchange, major street, and railroad grade separation projects eligible for partial funding from Measure I 2010-2040 revenues; and

WHEREAS, SANBAG has determined that this PROJECT and expenditure phase are included in the SANBAG Nexus Study and are eligible to receive Measure I 2010-2040 funds; and

WHEREAS, because revenue for the PROJECT from Measure I 2010-2040 will not be available until 2010 or later, CITY desires to use its own local (non-SANBAG) funds to proceed with the PROJECT at this time; and

WHEREAS, SANBAG and CITY are entering into this Agreement that will allow CITY to use funds not contributed or allocated by SANBAG to implement the PROJECT immediately with the understanding that SANBAG will reimburse CITY for eligible PROJECT expenditures at a later date with Measure I 2010-2040 revenue or other eligible public share revenue available to SANBAG in accordance with the reimbursement schedule established in the Measure I 2010-2040 project advancement repayment policy in Attachment B.

NOW, THEREFORE, SANBAG and CITY agree to the following:

**SECTION I**

**DEFINITIONS:**

- COST of a project is the project cost for the phase or phases defined in the Scope of Work in Attachment A.

- DEVELOPMENT SHARE of project cost is the developer contribution percentage as listed in the SANBAG Nexus Study times the COST of the PROJECT.
- PUBLIC SHARE of the project is the COST of the project minus its DEVELOPER SHARE.

**SANBAG AGREES:**

1. To reimburse CITY for the public share of those eligible PROJECT expenses that are incurred by CITY for the PROJECT-specific work activities, as set forth in Attachment A to this Agreement. Said reimbursement amount shall not exceed the public share amount as calculated by the total cost minus the development share of the cost, as indicated in the Nexus Study. The development share of the cost is the total cost times the fair share percentage in the Nexus Study, up to \$\_\_\_\_\_. In the event that the actual project expenditures are lower than the estimated cost in Attachment A, the development percentage shall be applied to the actual expenditures.

The calculation of reimbursement is based on the principles contained in Chapter 4, Section 4B of the Congestion Management Program prepared by the San Bernardino County Congestion Management Agency (CMA). The two pertinent principles are:

- Federal or state appropriations from transportation sources for specific projects that were given to specific local jurisdictions through their own effort or competitive grant process will buy down the project cost, not just reduce the required development share. The percentage share of the remaining project costs allocated to development and other sources will remain the same.
- Funds generated by local jurisdictions from non-transportation sources (federal, state or other) will be eligible for credit against development share contributions. In addition, SANBAG may permit the use of transportation dollars (federal or state appropriations) as a credit against development share on an exception basis, when the local jurisdiction shows that such transportation dollars are net “new” dollars to the regional transportation system.

SANBAG Measure I 2010-2040 Strategic Plan provides specific guidance regarding the fund types that buy down the total PROJECT cost vs. buy down the PUBLIC SHARE vs. buy down the DEVELOPER SHARE.

In the event that additional Federal/State funds are applied to this project the reimbursement amount shall be recalculated to reflect the change in Federal/State transportation funding.



2. To reimburse CITY, subject to Article 1 of this Section I, in accordance with the reimbursement terms set forth in the Measure I 2010-2040 project advancement repayment policy in Attachment B to this agreement and after CITY submits to SANBAG an original and two copies of the signed invoices in the proper form covering those actual allowable PROJECT expenditures that were incurred by CITY. SANBAG reserves the right to make modifications to the project advancement repayment policy at any time based on SANBAG Board approval. CITY will be notified by SANBAG of any modifications of this policy within 30 days of its modification.
3. When conducting an audit of the costs claimed under the provisions of this Agreement, to rely to the maximum extent possible on any prior audit of CITY performed pursuant to the provisions of state and federal laws. In the absence of such an audit, work of other auditors will be relied upon to the extent that work is acceptable to SANBAG when planning and conducting additional audits.

## SECTION II

### CITY AGREES:

1. Subject to Article 1 of Section I, that only eligible PROJECT-specific work activities, as set forth in Attachment A to this Agreement, which are for transportation purposes that conform to the SANBAG Nexus Study, will be eligible for future Measure I 2010-2040 reimbursement. CITY agrees that work it will later claim reimbursement for hereunder will only include eligible PROJECT-specific work activities.
2. To abide by all State and, if applicable, Federal policies and procedures pertaining to the PROJECT.
3. After completion of the PROJECT, to prepare and submit to SANBAG an original and two copies of signed consultant/contractor invoices for subsequent reimbursement of those eligible PROJECT expenses. CITY further agrees and understands that SANBAG will not reimburse CITY for any PROJECT expenditures that are not described in the PROJECT-specific work activities.
4. If Measure I 2010-2040 reimbursement funds are received by CITY, to repay to SANBAG any costs that are determined by subsequent audit to be unallowable within thirty (30) days of CITY receiving notice of audit findings. Should CITY fail to reimburse moneys due SANBAG within (30) days of demand, or within such other period as may be agreed between both parties hereto, SANBAG reserves the right to withhold future payments due CITY from any source under SANBAG's control.

5. To maintain all source documents, books and records connected with its performance under this Agreement for a minimum of five (5) years from the date of the Final Report of Expenditures submittal to SANBAG or until audit resolution is achieved and to make all such supporting information available for inspection and audit by representatives of SANBAG. Copies will be made and furnished by CITY upon request, but in no case less than five (5) years from the date of final reimbursement payment, if said reimbursement occurs under this Agreement.
6. To establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support CITY request for reimbursement, payment vouchers, or invoices which segregate and accumulate costs of PROJECT work elements and produce monthly reports which clearly identify reimbursable costs, matching fund costs, and other allowable expenditures by CITY.
7. To prepare a Final Report of Expenditures, including a final invoice reporting the actual eligible PROJECT costs expended for those activities described in the work activities, and to submit that Report and invoice no later than 60 days following the completion of those expenditures. The Final Report of Expenditures, three copies of which report shall be submitted to SANBAG, must state that these PROJECT funds were used in conformance this Agreement and for those PROJECT- specific work activities described.
8. To have a PROJECT-specific audit completed by SANBAG upon completion of the PROJECT. The audit must state that all funds expended on the PROJECT were used in conformance with this Agreement.
9. CITY agrees that the PROJECT reimbursement schedule will be determined according to Measure I 2010-2040 project advancement repayment policy in Attachment B (Dated September 2, 2008). CITY acknowledges that SANBAG reserves the right to make modifications to the project advancement repayment policy at any time based on SANBAG Board approval. CITY will be notified by SANBAG of any modifications of this policy within 30 days of its modification.
10. CITY agrees to post signs on ends of PROJECT noting that PROJECT is funded with Measure I funds. Signs shall bear the logos of San Bernardino Associated Governments and City of\_\_\_\_\_.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. SANBAG's financial responsibility shall not exceed \$\_\_\_\_\_ (as adjusted based on the availability of Federal/State transportation funding as described in SECTION I) or the amount based on actual cost as derived in ARTICLE 1, SECTION I, whichever is less.
2. Eligible PROJECT reimbursements shall include only those costs incurred by CITY for PROJECT-specific work activities that are described in this Agreement and shall not include escalation, interest, or other fees.
3. SANBAG shall have no responsibility to reimburse any otherwise allowable PROJECT expenditures until a) sufficient Measure I 2010-2040 revenue exists to fund those eligible PROJECT reimbursements and b) CITY has satisfied any and all other necessary PROJECT requirements including the submission of all required invoices and Reports.
4. In the event CITY fails to initiate construction by January 31, 2009, fails to complete the PROJECT commenced under this Agreement, fails to perform any of the obligations created by this Agreement, or fails to comply with applicable state and, if applicable, federal laws and regulations, SANBAG reserves the right to terminate this Agreement and any subsequent funding for the PROJECT or a portion thereof upon written notice to CITY. CITY may only be reimbursed for those eligible PROJECT expenditures that occur prior to the date of termination when successfully completed as provided for pursuant to this Agreement. An audit may be performed as provided in Section II, Article (8) of this Agreement. CITY shall provide evidence to SANBAG that construction has been initiated on PROJECT through the submission of invoices, executed contract, or similar information no later than March 31, 2009.
5. The CITY is responsible for payment of the entire development fair share amount. If there are other jurisdictions with minority development fair share amount, the CITY is responsible for establishing a cooperative agreement with other jurisdictions that guarantees the reimbursement of the minority development fair share according to terms mutually agreed upon by all parties.
6. Neither SANBAG nor any officer or employee thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully defend, indemnify and save harmless SANBAG, its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by

Government Code Section 810.8) occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

7. This Agreement will be considered terminated upon reimbursement of eligible costs by SANBAG.

**San Bernardino County  
Transportation Authority**

By: \_\_\_\_\_  
President, SANBAG Board of  
Directors

Date: \_\_\_\_\_

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
SANBAG County Counsel

Date: \_\_\_\_\_

**City of**

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
City Attorney

Date: \_\_\_\_\_

## **Attachment A**

### **Project Scope and Cost**

#### **Proposed Improvements:**

#### **Summary of Project Costs (Estimate):**

**Total Project Cost    \$**

**Attachment B (Dated: 9/2/2008)**  
**Measure I 2010-2040 Project Advancement Agreement (PAA) Repayment Policy**

1. **Overall Approach:** SANBAG will pay reimbursements to all eligible advanced projects up to 40 percent of the revenues allocated to the program categories from which the projects will be funded.
2. **Commitment of Available Revenues:**  
SANBAG will commit the full 40% of available revenues for each program to the reimbursement of Project Advancement Agreements on an annual basis. The SANBAG Board, at its discretion, may increase the 40% apportionment level to a higher percentage specific to each program if the time between expenditure and reimbursement has become greater than six years or if the other project needs for the fiscal year are less than the remaining 60% of the pertinent program.
3. **Order of reimbursement:** The order of reimbursement will be based on date of expenditure. Specifically, the dates of consultant and contractor invoices reflecting actual project expenditures will be used to represent the date of expenditure. Expenditures incurred prior to April 5, 2006 (the date when the model agreement for the Project Advancement Program was adopted by the SANBAG Board of Directors) will not be reimbursed.
4. **Execution of New Project Advancement Agreements:** SANBAG will allow for execution of new PAAs through January 31, 2009, with expenditures to be reimbursed using the same criteria as existing PAAs. Reimbursement for invoices dated prior to April 2010 (the initiation date of Measure I 2010-2040) and not covered under a PAA cannot be guaranteed. Projects not under PAAs and incurring expenses from April 2010 onward will be reimbursed under policies being developed through the Strategic Plan for the respective programs.
5. **Quarterly Reimbursements:** Reimbursements by SANBAG for eligible expenditures will be provided on a quarterly basis. The first reimbursements will occur in approximately July 2010, following the quarterly reconciliation of sales tax dollars by the State.
6. **Project Cost to be Reimbursed:**  
For the Valley Interchange and Major Street Programs, SANBAG will pay up to the Measure I share of Nexus Study project cost or Measure I share of the actual cost, whichever is less. The Measure I share means the portion being contributed from Measure I 2010-2040 Valley Interchange or Major Street Program funds. For new PAAs (i.e. those executed after adoption of these policies by the SANBAG Board on September 3, 2008), the Nexus Study project cost will be the cost included in the version of the Nexus Study in force at the time the first project expenditures were incurred or at the time of the execution of the agreement, whichever is earlier. This will provide cost equity with those projects already covered under existing PAAs.
7. **Submission of Invoices:** Jurisdictions must submit to SANBAG any reimbursable consultant and contractor invoices, or other verifiable record documenting the magnitude and date of expenditures on the project.
8. **Payment of Invoices by Date of Expenditure:** SANBAG staff will arrange the PAA invoices in order of expenditure (including invoices for projects still in progress), separately for each program and will draw a line at the point where cumulative expenditures (of the Measure I share of the cost) exceed the Board-established apportionment cap for each program for the given quarter. The Measure I share of the cost (i.e. the proportion of the cost being funded by the pertinent Measure I program) for all projects above the line will be reimbursed. All project expenditures below the line will wait for reimbursement until the following quarter. This process of quarterly payments will continue until all PAAs are fully repaid.
9. **Inclusion in Equitable Share Calculations:** For the Valley Major Street Program, reimbursement of PAAs will be included in the equitable share calculations maintained by SANBAG to ensure geographic equity over the life of the Measure.

## *Minute Action*

AGENDA ITEM: 10

**Date:** December 3, 2008

**Subject:** Prioritization of Interchanges for the Measure I 2010-2040 Valley Freeway Interchange Program

- Recommendation:** \*
1. Approve the recommended methodology for prioritizing interchanges for the Measure I 2010-2040 Valley Freeway Interchange Program, including the use of vehicle-hours of delay saved per million dollars in total interchange cost as the basis for setting priorities.
  2. Approve the interchange priority list in Table 1 as the basis for implementation of Measure I 2010-2040 funding allocation policies for the Valley Freeway Interchange Program, with acknowledgement that the I-10/Pepper interchange will receive further review. The list is to be updated at least every three years.

**Background:** This agenda item was first presented at the Major Projects Committee on October 9, 2008. The committee requested that staff conduct several follow-up activities prior to further consideration of priorities for the Measure I 2010-2040 Valley Interchange Program. This included: 1) an alternate calculation of benefit/cost using only the public share of the interchange cost; 2) consideration of the AM peak period traffic delays for those interchanges where the AM congestion could be greater than the PM congestion; and 3) further evaluation of the delays at the I-10/Pepper interchange. Some of the background behind the Interchange Program is included below to provide context for the discussion of interchange priorities.

*Approved  
Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

brd0812a-ss

The policy framework for the Measure I 2010-2040 Valley Interchange Program was conceptually approved by the SANBAG Board on August 6, 2008. The policy framework is provided as Attachment 1. One of the key components of the framework is the first policy in Attachment 1:

*In the event of a greater call on financial resources than available, fund interchanges included in the Valley Freeway Interchange Program according to a prioritization list based on a benefit/cost methodology and subject to revision every five years.*

When an excess call on financial resources occurs, staff envisions that a prioritization list similar to that of the Public Utilities Commission (PUC) railroad grade separation list be the arbiter of which interchange receives the available funding. The PUC approach allocates funds to the highest priority projects for which project sponsors are ready to move forward to construction. The higher priority project that is not ready will be passed over in favor of the next highest priority project that is prepared to move to construction.

A draft freeway interchange prioritization list has been developed, per direction from the SANBAG Board, based on a benefit-cost methodology. The list was initially presented on October 9.

### **Prioritization Methodology**

Given the above as background, staff recommends the following methodology for implementing the interchange prioritization process. The methodology is consistent with the one used by SANBAG in 2001 when a prioritization list was developed for a combination of railroad grade separation and interchange projects.

#### **Data Collection and Analysis:**

1. Conduct queue delay studies for the PM peak period at each interchange – the direct measurement of delay is the best and fairest way to quantify the level of congestion at each interchange. The PM peak period was used as the basis because the PM typically has more severe congestion than the AM peak period. However, use of the AM peak period is allowed where a local jurisdiction indicates that AM congestion is more severe than PM congestion. The goal is to use the “worst case” peak period for each interchange.
2. Calculate existing vehicle hours of delay (VHD) for the peak hour (total interchange delay)



3. Estimate existing delay that could be saved with an interchange improvement = (total interchange delay per vehicle minus a baseline delay per vehicle) times interchange peak hour volume, and factor to a daily basis
4. Estimate future delay saved = existing delay times a growth factor (same basis for growth as used for derivation of interchange fair share percentages)
5. For new interchanges – estimate delay that could be saved through congestion relief at adjacent interchanges using a similar methodology
6. Those interchanges with Trade Corridors Improvement Fund (TCIF) funding and other major funding commitments (Cherry/I-10, Citrus/I-10, Riverside/I-10, Tippecanoe/I-10) have been viewed as fully funded and exempt from prioritization.

Alternative prioritization criteria (six different criteria were considered as options for establishing interchange priorities):

1. Existing vehicle hours of delay (VHD) saved
2. Estimated future VHD saved (would increase priority for projects that have higher traffic growth rates)
3. Existing VHD saved per million dollars in interchange costs (would increase priority for projects with lower costs)
4. Future VHD saved per million dollars in interchange costs (would increase priority for projects that have higher growth rates and lower costs)
5. Existing VHD saved per million dollars in public share of interchange costs (would increase priority for projects with lower public share costs)
6. Future VHD saved per million dollars in public share of interchange costs (would increase priority for projects that have higher growth rates and lower public share costs)

Of these, existing VHD saved per million dollars in interchange costs (Criterion No. 3) is recommended as most suitable. The reason for this recommendation is that:

1. It focuses on documented congestion problems, as the public would currently perceive congestion, rather than on more speculative forecasts of congestion.
2. It combines the consideration of both benefit and cost, which will help target public share dollars on the most cost-effective projects first.
3. It is most consistent with Board direction to employ a benefit-cost methodology.

Criterion No. 5 was further considered per the request of the Major Projects Committee. The public share of the cost was calculated as the total interchange cost minus the development share of the cost. The development share of the cost is the total cost times the fair share percentage, as listed in Table 1. The use of

Criterion No. 5 would give additional preference to interchanges that have higher fair share percentages. An outcome of this approach is that it would favor interchanges that require a lower percentage of Measure I dollars. This would also mean that areas serving new development would receive additional preference over interchanges addressing existing congestion problems. This would typically result in new interchanges increasing in priority, since new interchanges tend to be serving areas of higher growth potential.

Staff believes that Criterion No. 3 provides the fairest comparison of interchange benefit/cost. New interchanges or interchanges in high growth areas should not be given additional advantage over interchanges with more serious existing congestion problems. In addition, it should be noted that competitive funding programs in the State of California generally use the total cost in calculating benefit/cost ratios, not the state funding amount. Thus, the recommended approach is consistent with the approach typically taken by the State.

Additional queue delay studies were conducted in the AM peak period at three interchanges: I-10/Euclid eastbound ramps and SR-60/Grove ramps in Ontario, and I-15/Baseline ramps in Rancho Cucamonga/Fontana. The selection of these interchanges was in response to requests by local jurisdictions. These analysis results are being awaited from the consultant and will be used to revise the delay estimates in Table 1 prior to the November 13 meeting.

In addition, SANBAG staff has consulted with County of San Bernardino staff concerning the I-10/Pepper interchange. Although discussions are continuing, SANBAG staff's review of information available from the County to date appears to confirm SANBAG's own studies that the ranking of the I-10/Pepper interchange is appropriate. A policy decision would be necessary for the interchange to be elevated in priority on grounds other than the benefit/cost analysis.

#### **Interchange Priority List**

Table 1 shows the results of the application of the above methodology to the 33 interchanges being evaluated. The table shows the most current estimates of interchange cost, the daily VHD, the ratio of daily VHD to interchange project cost, and the ratio of VHD to the public share of the project cost. The interchange development fair share percentage is also shown. The interchange ranks are sorted based on the recommendation of Criterion No. 3. Alternate ranks based on the use of Criterion No. 5 are also shown.

**Table 1. Valley Freeway Interchange Prioritization List  
(VHD = Vehicle Hours of Delay)**

	Cost (\$Mill, from Nexus Study)	Fair Share Percent	VHD Saved Existing	Existing VHD Saved Per \$Mill	Existing VHD Saved Per \$Mill Meas. I	Rank Based on Exist VHD Saved Per \$Mill	Rank Based on Exist VHD Saved Per \$Mill Meas. I
I-10/Cedar	\$ 34.35	30.0%	556	16.19	23.13	1	5
SR-210/Baseline	\$ 17.83	41.9%	257	14.39	24.77	2	2
SR-60/Central	\$ 26.72	58.8%	350	13.09	31.78	3	1
I-10/University	\$ 5.51	17.9%	68	12.33	15.02	4	9
I-215/University	\$ 29.27	44.1%	292	9.99	17.87	5	7
I-10/Alabama	\$ 26.70	50.5%	239	8.96	18.10	6	6
I-15/Baseline	\$ 31.80	50.0%	261	8.20	16.40	7	8
I-10/Mt. Vernon	\$ 31.81	5.1%	250	7.87	8.30	8	14
SR-60/Archibald	\$ 6.36	66.1%	50	7.86	23.19	9	4
I-10/Monte Vista	\$ 25.45	24.1%	189	7.41	9.77	10	12
SR-60/Grove	\$ 45.00	48.3%	324	7.20	13.93	11	10
SR-60/Euclid	\$ 7.00	44.5%	50	7.14	12.87	12	11
I-10/Euclid	\$ 8.00	17.4%	50	6.25	7.57	13	15
SR-60/Mountain	\$ 34.45	46.2%	167	4.84	9.00	14	13
SR-60/Ramona	\$ 26.72	31.3%	124	4.62	6.73	15	17
I-15/Sierra	\$ 12.70	80.3%	58	4.57	23.21	16	3
SR-210/Waterman	\$ 50.90	18.2%	229	4.50	5.51	17	19
I-10/Mountain View	\$ 50.90	37.8%	222	4.37	7.02	18	16
I-10/Pepper	\$ 33.85	34.0%	108	3.20	4.85	19	20
SR-210/Del Rosa	\$ 35.62	32.8%	101	2.84	4.22	20	23
SR-210/5 <sup>th</sup>	\$ 17.83	41.9%	49	2.74	4.71	21	21
I-10/Vineyard	\$ 74.00	60.0%	170	2.30	5.75	22	18
I-15/6th-Arrow	\$ 70.00	50.0%	132	1.89	3.78	23	24
SR-60/Vineyard	\$ 45.00	60.3%	81	1.80	4.53	24	22
I-10/4th/Grove	\$ 70.00	17.1%	125	1.78	2.15	25	25
I-215/Palm	\$ 10.92	15.8%	15	1.35	1.60	26	29
I-10/California	\$ 45.00	47.8%	45	1.01	1.94	27	27
I-10/Alder	\$ 99.45	50.0%	100	1.01	2.01	28	26
I-10/Wildwood	\$ 34.19	50.0%	31	0.92	1.83	29	28
I-215/Pepper-Linden	\$ 50.90	50.0%	32	0.63	1.26	30	30
I-15/Duncan Cyn.	\$ 62.90	77.3%	15	0.24	1.07	32	31
I-10/Beech	\$ 112.89	50.0%	30	0.27	0.54	31	32
I-10/Wabash	\$ 26.72	35.8%	6	0.22	0.34	33	33

Only two of the interchange rankings changed by more than five places between the two methods. The I-10/Mt. Vernon interchange dropped by six places, by virtue of its low fair share percentage, and the I-15/Sierra interchange increased by 13 places by virtue of its high fair share percentage.

Table 1, as modified to accommodate the AM peak period analysis referenced earlier, is recommended as the basis for implementation of Measure I 2010-2040 funding allocation policies for the Valley Freeway Interchange Program. SANBAG staff will conduct further review of the I-10/Pepper interchange, based on the concern that the realignment of Valley Boulevard may have affected the ranking of the interchange in Table 1. This review will be coordinated with local jurisdiction staff. It should be noted that delay studies and costs would be updated approximately every 3 years, or more frequently if requested by the Board, allowing for adaptation of the priority list to changing conditions. For example, existing interchanges in higher growth areas could gradually rise in priority over time.

***Financial Impact:*** This item is consistent with the approved Fiscal Year 2008-2009 SANBAG Budget. TN60909000

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. (*Meeting chaired by Mayor John Pomierski*)

***Responsible Staff:*** Steve Smith, Chief of Planning  
Ryan Graham, Transportation Planning Analyst  
Ty Schuiling, Director of Planning and Programming

### **Attachment 1**

## **Valley Freeway Interchange Program Policies Conceptually Approved by the SANBAG Board on August 6, 2008**

- A. In the event of a greater call on financial resources than available, fund interchanges included in the Valley Freeway Interchange Program according to a prioritization list based on a benefit/cost methodology and subject to revision every five years.
- B. Allow for advance reimbursement of large right-of-way expenditures for freeway interchange projects on an exception basis, subject to approval by the SANBAG Board.
- C. Although the possibility of loans for Valley Freeway Interchange Program projects was conceptually approved by the Major Projects Committee in February 2008, neither SANBAG nor local jurisdictions are obligated to enter into loan agreements for these projects. SANBAG may participate in loans of Measure I 2010-2040 funds on an exception basis. For projects granted a loan of Measure I funds by SANBAG, establish the following repayment terms:
  - a. Repayment of fair share loans shall include interest based on the Consumer Price Index (CPI) or another like inflation index approved by the SANBAG Board. Local jurisdictions anticipating the need for loans on specific interchange projects will provide estimates of those loan needs, including estimates of interest payments, through the annual Capital Projects Needs Analysis (CPNA). Local jurisdictions may include these financing costs in their development impact fee programs.
  - b. The repayment terms shall be 100% of development mitigation dollars received by the jurisdiction (or for the County sphere of influence) for the interchange portion of the jurisdiction/sphere fee program, payable quarterly, until the loan is retired. Deviations from the 100% commitment of collected funds will be considered on an exception basis. Additional terms and conditions for repayment will be made on a case-by-case basis, by mutual agreement between both parties and with approval of the SANBAG Board. The maximum timeframe for repayment of the loan shall be 10 years, which may be extended if projected or collected development fees are insufficient for repayment during this timeframe, subject to approval by the SANBAG Board.
  - c. Failure to make payments consistent with the terms of the loan agreement will result in the jurisdiction's loss of access to new allocations of MI 2010-2040 Valley Major Streets and Valley Freeway Interchange Program funds until payments are brought back to a level consistent with terms of the loan agreement.
  - d. If annexation of unincorporated area occurs within the Nexus Study "traffic shed" for an interchange, it is the expectation that any loan commitments related to that interchange will be reapportioned to the annexing city based on the adjusted fair share for the interchange project and will be included in any considerations by the Local Agency Formation Commission.
- D. Allow for SANBAG management of local jurisdiction interchange projects subject to the following conditions:
  - a. Local jurisdiction requests SANBAG management of interchange project

- b. SANBAG staff and/or SANBAG consultant has available resources for project management
- c. Local jurisdiction is willing to pay SANBAG project management fees based on estimate prepared by SANBAG or consultant
- E. SANBAG will reimburse jurisdiction for eligible expenditures within 30 days of receiving a complete and satisfactory invoice package from a jurisdiction, which shall include all backup and support materials required to substantiate invoice.
- F. Exclude the following as eligible expenditures from the Valley Freeway Interchange program:
  - a. Additional environmental or architectural enhancement not required as part of the mitigation established in the environmental document(s) prepared for a project.
  - b. Project management costs, with the exception of construction support costs
  - c. Property acquired through the right-of-way acquisition process that is not required for the actual construction of the project.
- G. Jurisdictions shall bear full responsibility for construction cost overruns, which will be established as any amount in excess of the total cost of the accepted bid and reasonable contingency amount included in the contract.

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

### AGENDA ITEM: 11

**Date:** December 3, 2008

**Subject:** License Agreement (SANBAG Agreement C09121) with the City of Redlands

**Recommendation:** \* Approve License Agreement (SANBAG Agreement C09121) with the City of Redlands for the construction and maintenance of a bicycle and pedestrian trail between Grove Street and Nice Avenue within the former Atchison, Topeka and Santa Fe Railway Company's Redlands Subdivision.

**Background:** In October 2008 the Board directed staff to prepare a License Agreement with the City of Redlands for that portion of their 7.5 mile non-motorized and recreational trail that is between Grove Street and Nice Avenue. The City's proposed trail weaves in and out of the Redlands Subdivision. The Agreement provides that the City will construct and maintain a bicycle and pedestrian trail along with other appurtenant improvements within the former Redlands Subdivision. In addition the City shall also perform weed abatement and graffiti removal along the entire right-of-way relieving SANBAG of weed abatement expenditures for that area.

SANBAG is supportive of the use of the railroad right of way for trail purposes where there is sufficient space available to do so and the construction and use of the trail would not impede our ability to implement passenger rail service.

**Financial Impact:** There is no financial impact at this time. Once the license agreement is approved, there would be some minor on-going savings to SANBAG as the cost for maintaining the right of way for the licensed segment would be transferred to the City of Redlands.

\*

*Approved*  
*Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

Board Agenda Item  
December 3, 2008  
Page 2

***Reviewed By:*** This item was reviewed by the Commuter Rail Committee on November 20, 2008 and unanimously recommended for approval. (*Meeting chaired by Patricia Gilbreath*)

***Responsible Staff:*** Michael Bair, Director Transit and Rail Programs  
Victoria Baker, Senior Transit Analyst



**SANBAG Contract No. C09121**

by and between

San Bernardino Associated Governments

and

City of Redlands

for

License Agreement for a portion of the Redlands Subdivision between Grove Street and Nice Avenue**FOR ACCOUNTING PURPOSES ONLY**

<input type="checkbox"/> Payable	Vendor Contract # <u>C0911</u>	Retention:	<input checked="" type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID <u>REDL CI</u>	<input type="checkbox"/> Yes ____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Amendment

Notes: This is a no cost License Agreement with the City of Redlands

Original Contract: \$ ____	Previous Amendments Total: \$ ____
Contingency Amount: \$ ____	Previous Amendments Contingency Total: \$ ____
	Current Amendment: \$ ____
	Current Amendment Contingency: \$ ____

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL →** \$ \_\_\_\_

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
<u>35209000</u>	____	____	____	\$ <u>0</u>
____	____	____	____	\$ ____
____	____	____	____	\$ ____
____	____	____	____	\$ ____

Original Board Approved Contract Date: 12/3/08 Contract Start: 12/3/08 Contract End: 1/1/2029

New Amend. Approval (Board) Date: \_\_\_\_ Amend. Start: \_\_\_\_ Amend. End: \_\_\_\_

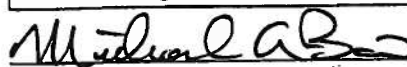
**If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:**

Approved Budget Authority →	Fiscal Year: ____ \$ ____	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ ____
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Is this consistent with the adopted budget? ☒ Yes ☐ No

If yes, which Task includes budget authority? \_\_\_\_

If no, has the budget amendment been submitted? ☐ Yes ☐ No**CONTRACT MANAGEMENT****Please mark an "X" next to all that apply:**☒ Intergovernmental ☐ Private ☐ Non-Local ☐ Local ☐ Partly LocalDisadvantaged Business Enterprise: ☐ No ☐ Yes \_\_\_\_ %Task Manager: **Michael Blair**Contract Manager: **Victoria Baker**

 11-13-08  
Task Manager Signature Date

 11-13-08  
Contract Manager Signature Date

Chief Financial Officer Signature Date

**BIKEWAY  
LICENSE AGREEMENT**

**BETWEEN**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**AND**

**CITY OF REDLANDS**

## BIKEWAY LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between the **SAN BERNARDINO ASSOCIATED GOVERNMENTS**, a public agency existing under the authority of the laws of the State of California ("SANBAG"), and the **CITY OF REDLANDS** ("Licensee"), upon and in consideration of the agreements, covenants, terms and conditions below:

### PART I - BASIC LICENSE PROVISIONS

1. Description of License Property: An at grade use of the property known as SANBAG's Redlands Subdivision right-of-way between Grove Street on the western extent at Mile Post 10.1 and Nice Avenue at the easterly extent at Mile Post 11.7, in the City of Redlands, County of San Bernardino, State of California, as shown on the attached Exhibit "A"  
  
Approximate area: Eighty Thousand Four Hundred Forty Eight Linear Feet (8,448 Lin. Ft.) One and Six Tenths Miles (1.6 Miles)
2. Use of License Property:  
Construction, maintenance and use by the public as a bikeway and pedestrian walkway and associated landscaping and appurtenances only and no other uses (§1.1, §10)
3. Commencement Date:  
January 1, 2009 (§1.2)
4. Term:
  - a. The initial term is for twenty (20) years commencing from the date hereof and ending on January 1, 2029. License shall automatically extend five (5) additional years at the end of the initial term, and shall continue with recurring five (5) year renewal options for each extension period after Term. (§1.2)
5. License Fees: Intentionally omitted
6. Insurance Amount: See Exhibit "B" (§16)

7. SANBAG's Address:

San Bernardino Associated Governments

C/o Los Angeles County Metropolitan Transportation Authority (MTA)

One Gateway Plaza 13<sup>th</sup> Floor – RRND007650

Los Angeles, CA 90012-2952

Attn: Executive Deputy Director, Real Estate

(§26.1)

8. Licensee's Address:

City of Redlands

P.O. Box 3005

Redlands, California 92373

Attn: Community Development Department

(§26.1)

9. Facility (hereinafter referred to as "Bikeway"):

A bicycle path, pedestrian walkway, trash receptacles, appurtenant improvements, drainage facilities, irrigation system and all landscaping materials, whether planted as part of this project or pre-existing and allowed to remain in place by Licensee. (§1.1)

The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II are incorporated into and made part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

SANBAG:

SAN BERNARDINO ASSOCIATED GOVERNMENTS

By: \_\_\_\_\_

Name: Velma C. Marshall

Title: Executive Deputy Director, Real Estate

For: Los Angeles County Metropolitan Transportation Authority (MTA)

As: Agent for SANBAG

LICENSEE:

CITY OF REDLANDS

By: \_\_\_\_\_

Name:

Title:

## **INDEX TO BIKEWAY LICENSE AGREEMENT - PART II**

<b>Section</b>	<b>Page</b>
1. Grant of License/Term .....	1
2. Payments .....	1
3. Taxes .....	1
4. Design and Construction .....	2
5. Contractors; Approval and Insurance .....	3
6. Community Concerns .....	3
7. Reimbursement .....	4
8. Liens .....	4
9. Landscaping .....	4
10. Fencing And Gates .....	4
11. Maintenance and Repair .....	4
12. Use .....	5
13. Abandonment .....	5
14. Breach .....	6
15. Surrender .....	6
16. Indemnification .....	6
17. Assumption of Risk and Waiver .....	6
18. Insurance .....	7
19. Tests and Inspections .....	7
20. Hazardous/Toxic Materials Use and Indemnity .....	7
21. Underground Storage Tanks .....	8
22. Subordinate Rights .....	8
23. Compliance with Laws .....	9
24. Condemnation .....	9
25. Markers .....	9
26. General Provisions .....	9

### **Exhibits:**

- "A" License Property**
- "B" Insurance Requirements**
- "C" Permitted Hazardous Materials**
- "D" Additional Provisions**

## **PART II - GENERAL LICENSE PROVISIONS**

### **1. GRANT OF LICENSE/TERM**

1.1 Grant of License. SANBAG hereby grants a non-exclusive license to Licensee in, on, over, under, across and along the real property of SANBAG in the location shown in the diagram attached hereto as Exhibit "A" and described in Item 1 of the Basic License Provisions (the "License Property"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Bikeway described in Item 9 of the Basic License Provisions, and any usual, necessary and related appurtenances thereto (the "Bikeway"), for the purposes described in Item 2 of the Basic License Provisions, together with rights for access and entry onto the License Property as necessary or convenient for the use of the Bikeway. In connection with this grant of license, Licensee, its council members, officers, directors, affiliates, employees, agents, customers, visitors, invitees, licensees and contractors (collectively, "Licensee's Parties") subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of SANBAG if necessary for the construction, operation and maintenance of the Bikeway or the License Property, but only after Licensee has received the prior written approval of the SANBAG, the Southern California Regional Rail Authority ("SCRRRA") and Los Angeles County Metropolitan Transportation Authority (MTA) for such entry and access. Right of access onto adjoining real property of SANBAG does not extend to the public, which Licensee shall take all reasonable methods to exclude from such adjoining property of SANBAG. The License Property, adjoining real property of SANBAG and personal property of SANBAG located thereon shall hereinafter collectively be referred to as "SANBAG Property".

1.2 Term of Agreement. ~~The term of this Agreement shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. Unless a specific term of this Agreement is filled in at Item 4.B of the Basic License Provision, or if Item 4A is circled, this Agreement shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions until terminated by either party on thirty (30) days' prior written notice. If Item 4.B of the Basic License Provisions is filled in, then this Agreement shall be a license for the term specified in said Item 4.B; provided, however, that SANBAG shall have the right to relocate the License Property, alter, or make changes as required by SANBAG prior to the date specified in Item 4.B by delivering one hundred eighty (180) days' prior written notice to Licensee, provided that SANBAG, in its sole, reasonable judgment, determines that it then may require possession of the License Property for its primary transportation-related purposes~~

SANBAG shall also have the right to terminate this Agreement, at any time, for the additional following reasons:

(a) If Licensee abandons the Bikeway or the License Property, no notice of termination is necessary, and this Agreement shall immediately terminate as set forth in Section 13.

(b) If Licensee breaches this Agreement, no notice of termination is necessary, and this Agreement shall immediately terminate, as set forth in Section 14.

The term of this Agreement as provided above is referred to as the "Term".

1.3 Condition of Premises. Licensee acknowledges that it has inspected and accepts the License Property in its present condition as suitable for the use for which this Agreement is granted. Execution of this Agreement by Licensee shall be conclusive to establish that the License Property is in good and satisfactory condition as of the Commencement Date.

### **2. PAYMENTS**

Intentionally omitted.

### **3. TAXES**

Intentionally omitted.

#### 4. DESIGN AND CONSTRUCTION

4.1 Submittal of Plans. Prior to commencement of any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal (hereinafter, "Work") on the License Property, Licensee shall submit work plans, including, without limitation, the irrigation plans and the specific types of trees and landscape contemplated in the design, to SANBAG and MTA for review and approval. Licensee will consult with SANBAG and MTA during the design phase to ensure SANBAG's approval and to coordinate project concerns. Any such Work must be carried out pursuant to work plans approved in writing by SANBAG, SCRRRA and MTA. If there are existing tenants on the License Property, Licensee will work with the tenants and, if at all possible, will prepare work plans compatible with the existing tenants.

4.2 Contents of Work plans. The SANBAG will approve only low maintenance trees and plants, including non-deciduous trees and shrubs which provide minimal root disruption to the surface and which require minimal trimming. No landscape materials will be planted in the proximity of any existing billboards, which, even when fully mature, would obstruct any visibility of the billboard from adjacent vehicular roadways. Licensee will also indicate in the work plans that it had contacted Dig-Alert and considered any underground utilities in its design and construction plans.

4.3 Performance of Work. Any Work performed or caused to be performed by Licensee on the Bikeway or the License Property shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable laws, rules and regulations (including the SANBAG's SCRRRA's and/or MTA's rules and regulations), building codes and ordinances; (c) only after execution of a written right of entry agreement with SANBAG, MTA and SCRRRA by Licensee and/or Licensee's Parties, and (d) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such work, and (ii) satisfactory to SANBAG, SCRRRA and MTA. In addition, Licensee shall provide SANBAG, SCRRRA and MTA with at least 10 calendar days' written notice prior to commencement of any Work on the License Property or the Bikeway, except in cases of emergency, in which event Licensee shall notify SANBAG's representative personally or by phone, as outlined in Section 11 hereof, prior to commencing any Work.

To avoid damaging SANBAG's and/or SCRRRA's underground signaling system, Licensee or Licensee's Parties shall not perform any excavation work along any portion of the License Property lying within one hundred fifty (150) feet of any at-grade road crossing, until it has received approval from SCRRRA to perform such work.

4.4 Prior Notification for Work and Request for Protective Services. Prior to commencing any Work which is conducted entirely within the License Property and southwesterly of the Barrier Fence, Licensee shall notify SANBAG, SCRRRA and MTA in writing, at least ten (10) business days in advance of the date Licensee would like to commence such Work. In such notice, Licensee shall specify: (i) the type of work to be performed and its location; (ii) the date(s) the work is scheduled to be performed, (iii) the name, contact person and telephone number of the contact person for each contractor or Licensee department planning to access the SANBAG Property to conduct the work, and (iv) whether any person or equipment will be within twenty five (25) feet of any track during the course of the work.

SANBAG, and SCRRRA shall then determine whether an SANBAG or SCRRRA flag person needs to be present during the work, whether Licensee, SANBAG and/or SCRRRA needs to implement any special protective or safety measures, and whether additional insurance is required during the course of the work. The provision of a flag person and the implementation of any special protective or safety measures shall collectively be referred to in this Agreement as "Protective Services". If Protective Services are required and performed by SANBAG or SCRRRA, Licensee shall pay SANBAG and/or SCRRRA (as applicable) for same.

Licensee understands that prior notification of SANBAG and SCRRRA as set forth herein does not guarantee the availability of Protective Services for the date Licensee proposes to do the work, and Licensee agrees not to enter the SANBAG Property to conduct the work, nor allow Licensee's Parties to do same, prior to securing the SANBAG and/or SCRRRA required Protective Services and approval to proceed with such work.



4.5 Soil Handling Procedures. Only Clean Soil (defined below) may be brought upon, used and/or spread on the SANBAG Property by Licensee in conjunction with Licensee's construction or maintenance of the Bikeway. Any soil currently existing on the SANBAG Property may not be spread on the property unless and until it is characterized as Clean Soil to the reasonable satisfaction of SANBAG. The terms used in this Section shall have the following meanings:

- (a) "Clean Soil": Soil that is free from Hazardous Materials.
- (b) "Import Soil": Soil which did not originate from the SANBAG Property.
- (c) "Hazardous Materials": As defined in Section 18 of this Agreement.
- (d) "Soil": Soil, dirt, soil amendments, topsoil, soil conditioners, fertilizers, back fill mix and any other soil mixture.

Licensee shall not bring upon or use any Import Soil on SANBAG Property in conjunction with the Work provided under this Agreement, unless the following conditions have been met: (i) the Import Soil does not contain rubbish, debris, or rocks greater than six (6) inches in dimension; (ii) the Import Soil is Clean Soil; and (iii) prior to putting the Import Soil on the SANBAG Property, Licensee provides documentation to SANBAG's reasonable satisfaction that the requirements (i) and (ii) above have been met.

4.6 As-Built Drawings. Within ninety (90) days after the substantial completion of the construction and installation of the Bikeway, Licensee shall deliver to SANBAG, for SANBAG's, SCRRA's and MTA's review and approval, two (2) full sets of as-built drawings for the Bikeway (the "As-Built Drawings"), which shall be developed, altered and/or changed so as to meet the requirements of SANBAG, SCRRA and MTA. At a minimum, however, such As-Built Drawings shall: (i) be substantially of the form of the work plans which were approved in writing by SANBAG, SCRRA and MTA; (ii) include all changes to the work plans which were approved in writing by SANBAG, SCRRA and MTA; (iii) show all improvements and construction performed by Licensee on the License Property; (iv) clearly indicate and label the area of the License Property; (v) show the centerline of the railroad tracks existing on the SANBAG Property, as of the date that construction and installation of the Bikeway was substantially complete; and (vi) show, to scale, on all plan view and cross section drawings, the northeasterly and southwesterly boundaries of the License Property with respect to the centerline of the railroad tracks set forth in item (v) above, and the northeasterly and southwesterly extent of the Bikeway with respect to the centerline of the railroad tracks set forth in item (v) above. To the extent that the As-Built Drawings indicate or show that the Bikeway has not been constructed pursuant to the construction plans and specifications approved by SANBAG, SCRRA and MTA, Licensee shall, at the request of SANBAG, rebuild, reconstruct and/or reinstall the Bikeway, at Licensee's sole cost and expense, so that the Bikeway will be constructed, located and installed in accordance with the approved construction plans and specifications and the approved changes thereto. Failure to provide As-Built Drawings to the SANBAG as set forth herein shall be deemed a material breach of this Agreement.

## 5. CONTRACTORS; APPROVAL AND INSURANCE

5.1 Approval. Any contractors of Licensee (Licensees' Parties) performing Work on the Bikeway or the License Property shall first be approved in writing by SANBAG, SCRRA and MTA, and shall enter into a written right-of-entry agreement with MTA and SCRRA. SANBAG, SCRRA and MTA reserve the right, throughout the Term of this Agreement, to refuse entry to the License Property to any of Licensee's Parties, if SANBAG, SCRRA and MTA have cause to do so. Licensee agrees to refuse entry onto the License Property to any of Licensee's Parties rejected by SANBAG, SCRRA and MTA in accordance with the provisions of this Section.

5.2 Insurance. Licensee shall cause any of Licensee's Parties which (i) may be involved with such Work, or (ii) may, for any reason, need to enter onto the License Property, to obtain and maintain in full force and effect during the Term of this Agreement, or throughout the term of such Work (as applicable), insurance, as required by SANBAG, SCRRA and MTA, in the amounts and coverage's specified on, and issued by insurance companies as described on, Exhibit "B". SANBAG, SCRRA and MTA reserve the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the Bikeway or the License Property.

## 6. COMMUNITY CONCERNS

Licensee shall be responsible for addressing any community concerns and questions relating to the Bikeway, and any Work performed on License Property including, without limitation, termination of existing leases, and ongoing maintenance of the License Property and the removal of the Bikeway at the termination of this Agreement, as provided in Section 15.

## **7. REIMBURSEMENT**

Licensee agrees to reimburse SANBAG, SCRRA and/or MTA for all reasonable costs and expenses incurred by them in connection with any work on, or maintenance of, the License Property or the Bikeway, including, but not limited to, costs incurred by SANBAG, SCRRA and/or MTA in: (i) furnishing any materials or performing any labor, (ii) reviewing Licensee's construction plans and specifications, and/or any changes thereto, (iii) inspecting any work of Licensee or Licensee's Parties, (iv) furnishing of those watchmen, flagmen and inspectors as SANBAG, SCRRA and/or MTA deems necessary, and (v) furnishing other items or performing other acts as SANBAG, SCRRA and/or MTA in their sole discretion deems necessary to monitor or aid in compliance with this Agreement. Licensee shall reimburse SANBAG, SCRRA and/or MTA for any such cost or expense immediately upon receipt of a bill or an invoice therefor.

## **8. LIENS**

Licensee will fully and promptly pay for all materials joined or affixed to the Bikeway or SANBAG Property, and fully and promptly pay all persons who perform labor upon said Bikeway or SANBAG Property. Licensee shall not suffer or permit to be filed or enforced against the SANBAG Property or the Bikeway, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance or Work, or out of any other claim or demand of any kind. Licensee shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by SANBAG with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend SANBAG from all obligations and claims made against SANBAG for the above described work, including attorney's fees. Licensee shall furnish evidence of payment upon request of SANBAG. Licensee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to SANBAG in compliance with applicable California law. If Licensee does not discharge any mechanic's lien or stop notice for works performed for Licensee, SANBAG shall have the right to discharge same (including by paying the claimant) and Licensee shall reimburse SANBAG for the cost of such discharge within ten (10) business days after billing. SANBAG reserves the right at any time to post and maintain on the SANBAG Property such notices as may be necessary to protect SANBAG against liability for all such liens and claims. The provisions of this section shall survive the termination of this Agreement.

## **9. LANDSCAPING**

SANBAG, SCRRA and/or MTA shall have the right to review and approve landscape plans prior to installation of the landscape materials, as outlined in Section 4, including any modifications made to the landscaping throughout the term of this License.

## **10. FENCING AND GATES**

Licensee, at its sole cost and expense, shall install fencing and gates on the License Property and shall maintain Licensee's installed fencing and gates and SANBAG's existing tubular steel fencing on SANBAG Property in conjunction with one another so as to prevent the public from accessing the SANBAG Property lying adjacent to the Bikeway. The new fencing and SANBAG's tubular steel fencing shall be referred to collectively in this Agreement as the "Barrier Fencing". If requested by SANBAG, Licensee agrees to install locked gates in the Barrier Fencing at locations to be specified by SANBAG, SCRRA and/or MTA. The new fencing and gates to be installed by Licensee shall be manufactured and installed pursuant to the specifications of SCRRA. Such gates will be used to provide access to adjacent SANBAG Property for the benefit of SANBAG, SCRRA and/or MTA and the beneficiaries of any agreement or other property right affecting such SANBAG Property. The Barrier Fencing and any required gates shall be included on any work plans required by SANBAG, SCRRA and/or MTA. All fencing and gate installation and Barrier Fencing maintenance work shall be done in accordance with the provisions of this Agreement, and to the satisfaction of SANBAG, SCRRA and/or MTA. SANBAG, SCRRA and/or MTA shall retain custody and be fully responsible for all locks and keys which allow access through the installed protective gates.

## **11. MAINTENANCE AND REPAIR**

**11.1 General Maintenance Responsibilities.** Licensee, at Licensee's sole expense, shall maintain the License Property and the Bikeway in a first-class condition during the Term of this Agreement and shall be responsible for all incremental costs related to development of the Bikeway, and maintenance of the License Property and the Bikeway as necessary to keep the License Property and the Bikeway in good order and condition, to SANBAG, SCRRA and/or MTA's satisfaction. Licensee's maintenance responsibilities shall include, but not be limited to, keeping the Bikeway and all other facilities and improvements of Licensee on the License Property weed, graffiti and litter-free

to the satisfaction of SANBAG, SCRRA and/or MTA. In addition, Licensee shall ensure that (i) all landscaping which is a part of the Bikeway be adequately watered, fed and pruned, so as to be maintained in a healthy condition; (ii) any and all signs required by SANBAG as part of the Bikeway be maintained in a clean, readable condition, and (iii) all drainage facilities constructed to accommodate the Bikeway be maintained to allow for free flow of water. Licensee's maintenance obligations are further described in Exhibit "D", attached hereto.

11.2 Irrigation. Licensee shall pay for all costs to irrigate the Bikeway and the costs for associated utilities, including, without limitation, water.

11.3 Maintenance of Barrier Fencing. Licensee shall further ensure that all Barrier Fencing be maintained to prevent unauthorized access to SANBAG Property lying adjacent to and northeasterly of the License Property. All materials used to maintain and repair the Barrier Fencing shall be materially similar to the original fencing material, and shall be to the satisfaction of SANBAG, SCRRA and/or MTA.

11.4 Immediate Repair. If any portion of the SANBAG Property, including improvements or fixtures, suffers damage by reason of the access to or use of the License Property by Licensee or Licensee's Parties, including but not limited to damage to the Barrier Fencing, damage arising from vandalism (including graffiti), accident, or damage arising from any tests or investigations conducted upon the License Property, Licensee shall, at its own cost and expense, immediately repair all such damage and restore the SANBAG Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by Licensee or Licensee's Parties. If Licensee fails to maintain the License Property to SANBAG, SCRRA and/or MTA's satisfaction, SANBAG, SCRRA and/or MTA may, but is not obligated to, maintain and clean up the License Property and Licensee shall immediately reimburse the applicable party for its costs.

11.5 Overhead and Underground Installations. License shall ensure that Licensee or Licensee's Parties protect from damage all underground and aboveground installations and improvements, including pipelines, fiber optic cables, overhead wire lines and billboards which are located on SANBAG Property and which may be impacted by construction, maintenance and/or use of the Bikeway. Licensee shall call Underground Service Alert (Dig-Alert) prior to any underground probe or excavation within the SANBAG Property. In addition, Licensee shall coordinate all work so as to not adversely hinder access to these installations and improvements by the owners.

11.6 Access for Normal Maintenance Work. Normal maintenance work which is conducted entirely within the License Property and southwesterly of the Barrier Fencing may be performed by Licensee or Licensee's parties without written notice to SANBAG, SCRRA and/or MTA, provided that Licensee and Licensee's Parties performing such maintenance work have previously received SANBAG, SCRRA and/or MTA's written approval to access the License Property for such purposes. Prior to commencing such normal maintenance work, however, the party performing such work is to provide SCRRA with at least 48 hours' advance notice by phone, identifying the time, duration and location of said work.

11.7 Access for Emergency Work. In cases where Licensee reasonably determines that emergency work is necessary, Licensee shall use its best efforts to contact SANBAG, SCRRA and/or MTA's representative personally or by phone prior to commencing such work. During any emergency work, Licensee shall comply with all requests and requirements of SANBAG, SCRRA and/or MTA staff or contractors responding to the emergency.

## 12. USE

The License Property and the Bikeway shall be used only for the purposes specified in Item 2 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto. No change shall be made by Licensee in the use of the License Property or to the Bikeway without SANBAG's and MTA's prior review and written approval.

In no event can the License Property be used for park or recreational purposes.

## 13. ABANDONMENT

Should Licensee at anytime abandon the use of the Bikeway or the License Property, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this Agreement shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, SANBAG shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement.

#### **14. BREACH**

Should Licensee breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, SANBAG and MTA at its option may:

(a) perform any necessary or appropriate corrective work at Licensee's expense, which Licensee agrees to pay to SANBAG upon demand, or

(b) with or without written notice or demand, immediately terminate this Agreement and at any time thereafter, recover possession of the License Property or any part thereof, and expel and remove therefrom Licensee and any other person occupying the License Property by lawful means, and again repossess and enjoy the License Property and the Bikeway, without prejudice to any of the remedies that SANBAG and MTA may have under this Agreement, at law or equity by reason of Licensee's default or of such termination.

#### **15. SURRENDER**

As a condition to termination of this Agreement for any reason or on the expiration of this Agreement, unless otherwise agreed to by SANBAG in writing to leave in place any part of the Bikeway, Licensee, at its own cost and expense, shall (i) relocate the landscaping and improvements, except for SANBAG's tubular steel fencing, or remove the Bikeway, as determined by the SANBAG in its sole discretion; and (ii) restore the SANBAG Property to a state and condition satisfactory to SANBAG. Should Licensee fail to comply with the requirements of the preceding sentence, SANBAG may at its option perform the same at Licensee's expense, which costs Licensee agrees to pay to SANBAG on demand. Notwithstanding anything herein to the contrary, SANBAG may, in its sole discretion, request Licensee to leave all or a portion of the Bikeway in place on the License Property, in which case, it would elect to assume title and ownership of said Bikeway, at no cost to SANBAG. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Bikeway is removed and the SANBAG Property is restored.

#### **16. INDEMNIFICATION**

Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to SANBAG), and hold harmless SANBAG and MTA and its subsidiaries, officers, directors, employees, agents, invitees, licensees, successors and assigns (individually and collectively, "Indemnitees"), to a reasonable extent allowed by law, from and against loss, liability, claims, demands, suits, liens, claims of lien, damages, costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the Licensee, or its officers, directors, affiliates, Licensee's Parties or anyone employed by or for whose acts Licensee is liable (collectively, "Personnel") or invitees of Licensee, in connection with License Property or arising from the presence upon or performance of activities by Licensee or its Personnel with respect to the License Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of Licensee or its Personnel, or (iii) non-performance or breach by Licensee or its Personnel of any term or condition of this Agreement, in each case whether occurring during the Term of this Agreement or thereafter.

The foregoing indemnity shall be effective except to the extent any liability is caused by the active negligence or willful misconduct of Indemnitees or unless Indemnitees are fully indemnified by any other lessee and/or licensee (unrelated to this License), shall survive termination of this Agreement, and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement. Upon request of SANBAG and MTA, Licensee shall provide insurance coverage, as provided in Section 18, for possible claims or losses covered by the indemnification and defense provisions of this Agreement.

Claims against the Indemnitees by Licensee or its Personnel shall not limit the Licensee's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for a Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

#### **17. ASSUMPTION OF RISK AND WAIVER**

To the maximum extent allowed by law, Licensee assumes reasonable risk of loss, damage or injury of any kind to any person or property, including without limitation, the Bikeway, the License Property and any other property of, or under the control or custody of, Licensee. Licensee's assumption of risk shall include, without limitation, loss or damage caused by: (i) defects in Licensee's improvement on the License Property, (ii) accident or fire

or other casualty caused by Licensee on License Property, (iii) normal and customary railroad activity, including SANBAG's, SCRRRA's and MTA transit operations, freight or other passenger rail operations, and the operations of any construction, maintenance or repair company validly operating on the SANBAG Property and including electrical discharge, noise or vibration resulting from said railroad activity on or near SANBAG Property but not including derailments caused by such rail activity, or (iv) any normal and customary response by SANBAG, SCRRRA and MTA or any of the Indemnitees with respect to any event resulting from the foregoing Items (i) through (iii). The term "SANBAG" as used in this section shall include: (i) any transit or rail-related company validly operating upon or over SANBAG's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by SANBAG, SCRRRA and MTA. Licensee, on behalf of itself and its Personnel (as defined in Section 16), and to the extent permitted by law, its invitees, as a material part of the consideration for this Agreement, hereby waives all claims and demands against SANBAG for any such loss, damage or injury of Licensee and/or its Personnel.

The provisions of this section shall survive the termination of this Agreement.

## **18. INSURANCE**

Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this Agreement insurance as required by SANBAG and MTA in the amounts and coverage's specified and issued by insurance companies as described on Exhibit "B". SANBAG and MTA reserve the right, throughout the Term of this Agreement, to review and upon giving 60 days' notice to Licensee, to change the amount and type of insurance coverage it requires in connection with this Agreement or any work to be performed on the License Property. Prior to (i) entering the License Property or (ii) performing any Work or maintenance on the License Property, Licensee shall furnish SANBAG and MTA with insurance endorsements or certificates evidencing the existence, amounts and coverage's of the insurance required to be maintained hereunder. As a public entity, Licensee may satisfy this requirement through the use of commercial insurance, self-insurance, risk pooling or risk retention, or any combination thereof at Licensee's option. SANBAG nor MTA shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this Agreement.

## **19. TESTS AND INSPECTIONS**

SANBAG and MTA shall have the right at any time to inspect the License Property and the Bikeway so as to monitor compliance with this Agreement. If, in SANBAG's or MTA's sole judgment, any installation on, or use or condition of the License Property may have an adverse effect on the SANBAG Property, adjacent property (whether or not owned by SANBAG) or SANBAG, SCRRRA or MTA operations, SANBAG shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the License Property, as it determines to be necessary or useful to evaluate the condition of the License Property. Licensee shall cooperate with SANBAG in any tests or inspections deemed necessary by SANBAG. Licensee shall pay or reimburse SANBAG, as appropriate, for all reasonable costs and expenses incurred due to tests, inspections or any necessary corrective work and inspections thereafter.

## **20. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY**

Licensee shall operate and maintain the License Property in compliance with all, and shall not cause or permit the License Property to be in violation of any federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to Licensee or the License Property ("Environmental Laws"). Except for Hazardous Materials expressly approved by SANBAG in writing as shown on Exhibit "C", Licensee shall not cause or permit, or allow any of Licensee's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the SANBAG Property. Any Hazardous Materials on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects. Licensee will not be responsible for any condition existing prior to the commencement of this License.

Licensee shall indemnify, defend (by counsel acceptable to SANBAG) and hold harmless the Indemnitees (as defined in Section 16) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Licensee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Bikeway or the License Property or contamination of the SANBAG Property or adjacent property (i) which occurs due to the use and occupancy of the Bikeway or the SANBAG Property by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.

The foregoing indemnity shall be effective except to the extent any liability is caused by the active negligence or willful misconduct of Indemnitees or unless Indemnitees are fully indemnified by any other lessee and/or licensee (unrelated to this License), shall survive termination of this Agreement, and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement.

Licensee shall promptly notify SANBAG of any release on, or contamination of, SANBAG Property of which Licensee or any of Licensee's Parties becomes aware. In addition, in the event of any release on or contamination of the License Property by Licensee or Licensee's Parties, Licensee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the SANBAG Property and all affected adjacent property, whether or not owned by SANBAG) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover.

## **21. UNDERGROUND STORAGE TANKS**

NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY SANBAG, WHICH APPROVAL MAY BE WITHHELD IN SANBAG'S SOLE DISCRETION.

At SANBAG's option, upon the termination of this Agreement at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment and clean up and remove all Hazardous Materials in, on, under and about the SANBAG Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of SANBAG and any governmental authorities having jurisdiction thereover, and deliver to SANBAG a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

## **22. SUBORDINATE RIGHTS**

This Agreement is subject and subordinate to the prior and continuing right and obligation of SANBAG, its successors and assigns, to use the SANBAG Property or any portion thereof in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto SANBAG, its successors, assigns and permittees, the right to construct, reconstruct, operate, maintain, use and/or relocate existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the SANBAG Property or any portion thereof, and in connection therewith the right to grant and convey to others, rights and interests to the SANBAG Property or any portion thereof. This Agreement is subject to all licenses, leases, easements, reservations, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the Property now or hereafter, and this Agreement is executed and delivered by SANBAG without any warranty of title, express or implied, and the words "grant" or "convey" as used herein shall not be construed as a warranty of title or as a covenant against the existence of any such title exceptions.

In the event SANBAG is made aware of any intent by its permittees to perform any of the above-referenced activities, SANBAG agrees to request said permittees to promptly advise and fully inform Licensee with respect to said intentions.

This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the SANBAG Property now or hereafter, and the words "grant" or "convey" as used herein shall not be construed as a covenant against the existence of any such title exceptions.

Neither SANBAG, SCRRRA or MTA, or any Indemnatee shall have any liability or obligation with respect to any acts or omissions of any of the beneficiaries of the above-referenced title exceptions. SANBAG, its successors, assigns and permittees shall, at all times, have the right to enter upon and use the License Property in common with Licensee, provided that such entry and use does not materially and adversely affect Licensee's long term use of said SANBAG Property.

The beneficiaries of the title exceptions and any other business operating on or possessing rights to use SANBAG Property, including the owners of any advertising signs located on said Property, are referred to herein as "Businesses".

Licensee agrees to pay any and all costs or expenses resulting from, or arising out of, construction of the Bikeway or related to Licensee's use and occupancy of the License Property, including all costs and



expenses resulting from any Relocation Negotiations with any Business, the termination of such Business' right to use and occupy the SANBAG Property, and any relocation of any Business resulting therefrom.

### 23. COMPLIANCE WITH LAWS

Licensee shall comply with all applicable federal, state and local laws, regulations, rules and orders in its work on, or maintenance, inspection, testing or use of, the Bikeway and the SANBAG Property and shall furnish satisfactory evidence of such compliance promptly upon request of SANBAG. SANBAG may enter the License Property to inspect the Bikeway at any time, upon provision of reasonable notice of inspection to Licensee. Licensee shall obtain all required permits or licenses required by any governmental authority for its use of the License Property and the Bikeway, at its sole cost and expense.

### 24. CONDEMNATION

In the event all or any portion of the License Property shall be taken or condemned for another public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee assigns to SANBAG all compensation (if any) arising out of such taking or condemnation awarded to Licensee.

### 25. MARKERS

Intentionally omitted.

### 26. GENERAL PROVISIONS

26.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to such party at its address set forth in the Basic License Provisions. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

26.2 Non-Exclusive License. The license granted herein is not exclusive and SANBAG specifically reserves the right to grant other licenses within the License Property.

26.3 Governing Law. This Agreement shall be governed by the laws of the State of California.

26.4 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

26.5 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to SANBAG, SCRRA and/or MTA arising out of this agreement which is not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law. Such interest will be due SANBAG, SCRRA and/or MTA, as applicable, as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement, provided, however, that interest shall not be payable on late charges incurred by Licensee.

26.6 Captions. The Captions included in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement or any provision hereof, or in any way affect the interpretation of this Agreement.

26.7 Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier termination of this Agreement, including without limitation, all obligations concerning the condition of the SANBAG Property and the Bikeway.

26.8 Waiver of Covenants or Conditions. The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.

26.9 Amendment. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole

or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

26.10 Assignment. This Agreement and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of SANBAG, which may be withheld in SANBAG's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and give SANBAG the right to immediately terminate this Agreement.

26.11 Attorneys' Fees. In any judicial or arbitration proceeding involving performance under this Agreement, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

26.12 Nondiscrimination. Licensee certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to the License Property are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

26.13 Further Acts. Licensee agrees to perform any further acts and to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, at SANBAG's sole discretion, the relocation of the Bikeway and the license granted hereby.

26.14 Termination for Public Project. Licensee hereby expressly recognizes and agrees that the License Property is located on SANBAG property that may be developed for public projects and programs which may be implemented by SANBAG or other public agencies, such as, but not limited to: rail and bus transit ways, bikeways, walkways, beautification projects and other public uses (collectively "Project"), and that Licensee's use of the License Property under this Lease is *subject to SANBAG's right to require Licensee to relocate the License Property, alter, or make changes as required by SANBAG, at Licensee's sole cost and expense unless relocation of the Facility (bikeway) is incorporated in the Project. Accordingly, as a condition to entering into this Lease, SANBAG expressly reserves the right to require Licensee to relocate, alter, or make changes as required by SANBAG, for any public Project.* Licensee expressly acknowledges and agrees that: (1) SANBAG may relocate the License Property for any public project; (2) Licensee will NOT oppose any public Project when planned or implemented on or adjacent to the License Property; and (3) in the event SANBAG requires Licensee to relocate the License Property for any public Project, Licensee (a) shall not be entitled to receive any relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601 et seq; and (b) shall not be entitled to any compensation under the eminent domain law, as a result of such termination and vacation of the License Property.

Licensee
SANBAG

26.15 Future Need of License Property. If SANBAG shall at any time, or from time to time, so require by written notice thereof to Licensee based on the need of SANBAG, in its sole discretion, for the License Property for its public purposes Licensee shall reconstruct, alter, make changes as required by SANBAG, relocate or remove its Facility at Licensee's sole cost and expense.

26.16 Relocation. Licensee hereby waives any right to relocation assistance, moving expenses, goodwill or other payments to which Licensee might otherwise be entitled under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. § 4601 et seq. and/or the California Relocation Assistance Law, as amended, Government Code § 7260 et seq. but for this waiver and SANBAG's express right of termination.

26.17 Time of Essence. Time is of the essence.

26.18 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

26.19 Revocable License. ~~Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted herein is revocable by SANBAG in accordance with the terms of this Agreement.~~



26.20 Entire Agreement; Amendments. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of SANBAG and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

26.21 Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein.

**Exhibit "A"**

**Exhibit "B"**

**INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS**

Tenant, Licensee, or Permittee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of SANBAG and MTA property hereunder by the Tenant, Licensee, or Permittee, his agents, representatives, employees or subcontractors.

**Minimum Scope of Insurance** (Check all applicable boxes)

Coverage shall be at least as broad as:

- ☒ Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- ☒ Insurance Services Office Form No.CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- ☒ Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- ☐ Course of Construction insurance form providing coverage for "all risks" of loss.
- ☐ Property insurance against all risks of loss to any tenant improvements or betterments.
- ☐ Insurance Services Office Railroad Protective Liability
- ☐ Contractor's Pollution Liability with coverage for:
  - a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
  - b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
  - c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
  - d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

**Minimum Limits of Insurance** (Check all applicable boxes)

Tenant, Licensee, or Permittee shall maintain limits no less than:

- ☒ General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ☒ Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- ☒ Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- ☐ Course of Construction (Builder's Risk): Completed value of the project.
- ☐ Property Insurance: Full replacement cost with no coinsurance penalty provision.
- ☐ Railroad Protective Liability: \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be twice the required per occurrence limit
- ☐ Contractors Pollution Liability: \$1,000,000 per occurrence/\$2,000,000 annual aggregate.

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by SANBAG and MTA. At the option of SANBAG and MTA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SANBAG and MTA, its officials and employees; or the Tenant, Licensee, or Permittee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

### **Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. SANBAG and MTA, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Tenant, Licensee, or Permittee; products and completed operations of the Tenant, Licensee, or Permittee; premises owned, occupied or used by the Tenant, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Tenant, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to SANBAG and MTA, its subsidiaries, officials and employees.
2. For any claims related to this project, the Tenant, Licensee, or Permittee's insurance coverage shall be primary insurance as respects SANBAG and MTA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by SANBAG and MTA, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to SANBAG and MTA, its subsidiaries, officials and employees.
4. The Tenant, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to SANBAG and MTA.
6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the SANBAG and MTA, its Subsidiaries, officials, and employees as additional insured or provide a waiver of subrogation.
7. MTA lease number must be included with description of leased premises.

Course of construction policies shall contain the following provisions:

1. SANBAG and MTA shall be named as loss payee.
2. The insurer shall waive all rights subrogation against SANBAG and MTA.

### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A- VII, unless otherwise approved by SANBAG and MTA.

### **Verification of Coverage**

Tenant, Licensee, or Permittee shall furnish SANBAG and MTA with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by SANBAG and MTA before work commences. As an alternative, the Tenant, Licensee, or Permittee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

### **Contractors and Subcontractors**

Tenant, Licensee, or Permittee shall include all contractors and subcontractors as insureds under its policies or require certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. The administration of insurance compliance of contractors and subcontractors shall be subject to audit review by SANBAG and MTA.

**Exhibit "C"**

**Permitted Hazardous Materials**

**No hazardous materials are permitted to be used or stored on Premises.**

## Exhibit "D-1 "

### Additional Provisions

1. **Importation of Soil/Fill Dirt.** Licensee shall not bring upon or use any Import Soil on the Premises in conjunction with any purposes allowed under this Agreement, until said Import Soil has been laboratory tested by a certified hazardous waste testing laboratory and the test results have been approved by MTA's Environmental Consultant. Additionally, any soil currently existing on the Premises may not be spread on the Premises unless and until it is characterized as Clean Soil to the reasonable satisfaction of MTA's Environmental Consultant.
2. **Maintenance of Premises.** Licensee shall keep the Premises free and clear of weeds, trash, vegetation, unauthorized vehicle parking, graffiti and occupancy by transients/homeless persons or individuals. Licensee shall be fully responsible for ALL maintenance and maintenance that is required or necessary in connection with Licensee's use of Premises.
3. **Protection of Underground and Aboveground Installations.** Licensee shall ensure that it and Licensee's Parties protect, from and against any and all damage, all underground and aboveground installations and improvements, such as pipes, fiber optic lines and wires, which may be impacted by any work or any use of the Premises by Licensee. Any new utility lines and/or fiber optic crossings, etc., proposed to be added within the right of way by any party shall be applied for in the normal process and covered by separate License Agreement directly with SANBAG.
4. **Improvements.** Both Licensee and MTA acknowledge that the Premises is leased in "AS IS" condition and any track removal, grading, paving and fencing as may be necessary or required to meet Licensee's needs will be the sole responsibility of the Licensee. No permanent structures may be constructed on the premises without MTA's prior written approval. Licensee will be responsible for the removal of all permitted improvements upon termination of Lease.
5. **Utilities.** Licensee shall pay for any and all utilities for its benefit, security and use.
6. **Warranties.** The MTA makes no warranties as to the suitability of the location for Licensee's intended use as to zoning, visibility, traffic count or any other factors which may cause Licensee to want to lease the premises.
7. **Zoning or Permitting.** Any permits, inspection fees, or costs associated with the use or maintenance of the Premise by any governmental agency, department, or organization, or any labor expenses for the installation or maintenance of any permitted improvements are the Licensee's sole responsibility. Copies of permits are to be readily available for inspection by MTA personnel.
9. **Signage.** NO SIGNS PERMITTED on, or along the perimeter of the Premises unless such signs were requested and approved under your original proposal and covered by the required insurance.
10. **SANBAG's Right to Control Leasing and Licensing within entire Right of Way.** SANBAG shall continue to control Leasing and Licensing within the entire Right of Way. All applications for new utility crossings, ground Leases, or similar uses outside the scope of the approved Bike Trail/Beautification Plan, shall continue to be under the direct control and management of SANBAG.

Licensee	SANBAG

Initials

## Exhibit "D-2 "

**Additional Maintenance Provisions.** Licensee shall provide labor, equipment, tools and materials necessary to fully maintain the Bikeway and its landscaping. Maintenance tasks that Licensee will be responsible for shall include, but not be limited to:

- (a) Weed abatement, which will be performed on a monthly basis.
- (b) Removal and disposal of refuse and debris, including broken concrete and asphalt, construction debris, scrap metal, broken glass, paper trash, furniture, appliances, automobile parts, shopping carts, tires, bicycles, dead vegetation, and other materials illegally dumped on the Bikeway. Debris shall be removed monthly and/or upon request.
- (c) Landscape Maintenance:
  - Provide adequate watering for the planted trees, shrubbery and ground cover to keep plantings in a healthy condition.
  - Pruning of trees. During the first five years of establishment, trees shall receive at least annual pruning. All cuttings shall be disposed of off-site, the same day.
  - Planting design and subsequent trimming plan shall incorporate compliance with existing regulations related to visibility and clearance for vehicles and pedestrians (including bus stop clearance requirements) and to maintain adequate visibility to existing advertising billboards.
  - Tree trimming at bus stops shall meet requirements that no part of any tree shall extend beyond the curb line for the entire length of the red curb and that at the curb line, no part of any tree shall be lower than 13 feet above the street level.
  - Maintenance levels shall be sufficient to not pose a fire hazard to all SANBAG and SCRRRA buildings and structures, including poles and wirelines.
  - Respond to emergency situations, including trimming for public safety and visibility of traffic devices, signs, etc.
  - To facilitate railroad operations, the landscaping shall also be maintained so as to not:
    - (i) obstruct railroad signs and signals,
    - (ii) interfere with railroad employees performing their duties on the SANBAG Property,
    - (iii) prevent the proper functioning of signal and communication lines, or
    - (iv) railroad employees from visually inspecting moving equipment from their normal duty stations.
  - Licensee shall maintain the northeasterly extent of any and all landscaping associated with the Bikeway and the License Property such that the same are at all times no closer than twenty (20) feet from the centerline of the nearest railroad track located northeasterly of the License Property.
  - Fencing and landscaping associated with the Bikeway lying within one hundred and fifty (150) feet of the centerline of any at-grade road crossing of SANBAG Property shall meet the following minimum requirements:
    - (i) landscaping shall be maintained to a height of not more than three (3) feet above surrounding ground level;
    - (ii) fencing shall be maintained to a height of not more than four (4) feet above surrounding ground level.

(d) Investigate and resolve maintenance requests as quickly as possible consistent with staff and equipment availability and City policy.

(e) Post SANBAG-approved signs regarding the Bikeway project and/or ownership of the Right of Way. Maintain and replace signs as necessary.

(f) Remove graffiti from signs, posts and all hard structures appurtenant to the Bikeway and its landscaping on a weekly basis. Licensee shall not be responsible for maintenance of any erected billboards or appurtenances thereto.

In event the Bikeway and SANBAG Property not be maintained as herein provided, to SANBAG, SCRRA's and/or MTA's satisfaction, SANBAG, SCRRA and/or MTA may perform, at Licensee's expense, any necessary work including, but not limited to, tree and other landscape trimming and fence replacement, and Licensee agrees to reimburse SANBAG, SCRRA and/or MTA for all incurred costs.

Licensee	SANBAG

Initials



- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

### *Minute Action*

AGENDA ITEM: 12

**Date:** December 3, 2008

**Subject:** Property Research for the former Southern Pacific Baldwin Park Branch

**Recommendation:** \* Approve an increase in Purchase Order 08138 with the County of San Bernardino Surveyors Office for property research of the former Southern Pacific Baldwin Park Branch in the amount of \$20,000 for a new total of \$90,000 as identified in the Financial Impact Section.

**Background:** In February 2008, as a result of the settlement in the James Banks, Jr., et al. v. J.T. Storm Development, LLC, et al. the Board of Directors approved Purchase Order 08138 with the County Surveyors for the review of title for much of the Baldwin Park Branch. The County Surveyor's office was recommended due to the unique qualifications and demonstrated property related expertise.

The surveyor was to review current legal documents and underlying fee ownership information to determine if and where reversionary rights existed. During the review of the legal documents and ownership information it was determined that certain documents were in need of revision to achieve a mutual outcome to the Banks and SANBAG settlement. SANBAG requested the Surveyors Office assistance in the refinement of the legal descriptions of property acquired by SANBAG.

The County Surveyor has indicated that the additional work is estimated to be \$20,000.

*Approved*  
*Board of Directors*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

***Financial Impact:*** This item is consistent with the adopted budget. Funding for the additional work is contained in Task 35209000 – General Commuter Rail. The funding source is LTF-Planning.

***Reviewed By:*** This item was reviewed by the Commuter Rail Committee on November 20, 2008 and unanimously recommended for approval. (*Meeting chaired by Patricia Gilbreath*)

***Responsible Staff:*** Michael Bair, Director of Transit and Rail Programs  
Victoria Baker, Senior Transit Analyst

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 13

**Date:** December 3, 2008

**Subject:** 2009 State and Federal Legislative Program

**Recommendation:**\* Approve the 2009 State and Federal Legislative Program

**Background:** The purpose of this item is to present the SANBAG state and federal legislative program to the Board for its annual review of legislative priorities. SANBAG staff recommends a number of minor edits to the legislative program which preserves the flexibility and overall priority issues SANBAG has typically supported and opposed.

The state and federal legislative programs also provide a foundation for SANBAG's advocacy plan. While the state and federal legislative programs are fairly similar regarding general policy initiatives, there are a few distinct differences in relation to funding and the reliance on formula funds from the state and a combination of formula and discretionary funds from the federal government.

### ***SANBAG's State Legislative Program***

SANBAG's state legislative program is focused on protecting and increasing funding for transportation, familiarizing Sacramento on priority projects of regional importance, being a strong voice for community issues and leading policy-driven discussions. Please see (Attachment #1) for a full description of SANBAG's State Legislative Program.

*Approved*  
*Board of Directors*

*Date:* \_\_\_\_\_

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

BRD0812A-JF.docx

Attachments:

BRD0812A1-JF.docx

BRD0812A2-JF.docx

50309000

***SANBAG's Federal Legislative Program***

SANBAG's federal legislative program provides Board direction to work with our Congressional delegation and federal leaders to protect and enhance current funding levels for transportation programs, protect and enhance flexibility in use of transportation revenue and reduce or eliminate costly and duplicative administrative and regulatory requirements. Please see (Attachment #2) for a full description of SANBAG's federal legislative program.

- Financial Impact:*** Funding for SANBAG's legislative program is consistent with the adopted SANBAG Budget Task No. 50309000.
- Reviewed By:*** This item was reviewed by the Administrative Committee on November 12, 2008 (Chaired by Mayor Paul Eaton).
- Responsible Staff:*** Jennifer Franco, Director of Intergovernmental and Legislative Affairs

# **San Bernardino Associated Governments 2009 State Legislative Program**

## **Mission Statement**

*"SANBAG's mission is to enhance the quality of life for all residents in San Bernardino County by improving cooperative regional planning, developing an accessible, efficient, multi-modal transportation system, strengthening economic development efforts and exerting leadership in creative problem solving."*

## **OVERALL OBJECTIVES**

1. Increase advocacy efforts.
2. Maximize current funding levels.
3. Optimize transportation revenues and funding sources that enhance SANBAG's ability to develop and deliver planned projects.
4. Maximize flexibility in the use of existing transportation revenues.
5. Streamline administrative and regulatory processes.

## **STATE LEGISLATIVE PROGRAM**

1. **Increase Advocacy Efforts.**
  - A. Influence decision makers to enact policies and supply funds supporting and advancing transportation needs in San Bernardino County.
  - B. Continue to seek money for the maintenance and preservation of our existing roads, highways, bridges and transit.
  - C. Continue to support legislation that aims to reduce congestion and freight impacts to San Bernardino County.
  - D. Increase efforts to advocate for issues relating to housing, water and economic development as directed by the SANBAG Board of Directors.
2. **Maximize current funding levels for transportation programs.**
  - A. Protect existing highway and transit funds, including Proposition 42, Traffic Congestion Relief Program, Public Transportation Account and Transportation Development Act, against suspension, transfer or expenditure for non-transportation uses or for purposes other than those specified in law.

**2. Maximize current funding levels for transportation programs. (Continued)**

- B. Support state budget and California Transportation Commission allocations to fully fund projects for San Bernardino County included in the State Transportation Improvement Program (STIP) and the Measure I Expenditure Plan.
- C. Support the protection of the statutory 1.5 percent of revenue cap on administrative fees levied by the Board of Equalization (BOE) for the collection and administration of county transportation sales tax measures.
- D. Support full funding of the regional programming process to provide for regional determination and programming for the use of all current funding sources and to provide total flexibility for all current and future STIP programs.
- E. Support state policies that assure timely allocation of transportation revenue, including allocations of new funds available to the STIP process as soon as they are available.
- F. Continue to support the protection of AB 2766 vehicle license fee funding in the South Coast Air Basin, the South Coast Air Quality Management District (SCAQMD), to the cities and the Mobile Source Air Pollution Reduction. Review Committee (MSRC); support MSRC's independence as a committee.
- G. Support legislation or the development of administrative policies to permit a program credit for local funds spent on accelerating STIP projects through right-of-way purchases, or environmental and engineering consultant efforts.
- H. Support legislation that will allow the state to advance and/or loan funding to local agencies for projects that are funded through sales tax programs, but delayed due to cash flow problems.
- I. Support legislation and/or budgetary actions to assure a fair share of State revenues of intercity rail (provided to Amtrak, Metrolink or other operators) funding for Southern California and San Bernardino County.
- J. Support legislation that ensures equity of benefit from the investment of State passenger rail funds to all passenger rail lines including commuter rail systems.
- K. Oppose legislation that would reduce SANBAG's share of Congestion Mitigation and Air Quality (CMAQ) funds, the direct allocation of such funds, or the flexibility to use such funds. Also oppose any attempt to change the weighting factors assigned to nonattainment areas.
- L. Oppose any proposal that could reduce San Bernardino County's opportunity to receive transportation funds, including diversion of state transportation revenues for other purposes. Fund sources include, but are not limited to, the State Highway Account (SHA), Public Transit Account (PTA), and Transportation Development Act (TDA) and any ballot initiative sources.

3. **Optimize transportation revenues and funding sources that enhance the ability of SANBAG to implement its transportation programs and plans.**

- A. Support the Southern California Consensus Group, a coalition of transportation stakeholders, that supports project delivery using a regional corridor system plan and corridor share approach to ensure the fair distribution of funding, promote local contributions to projects and address community quality of life concerns throughout the Southern California region.
- B. Support or seek legislation and administrative financing/programming policies and procedures to assure an identified source of funding and an equitable distribution of the funding for bus and rail services in California.
- C. Support legislation to assure that dedicated state intercity rail funding is allocated to the regions administering each portion of the system and assure that funding is distributed on an equitable basis.
- D. Support or seek legislation to assure a dedicated source of funding, other than the State Highway Account, for local streets and road maintenance and repairs.
- E. Support legislation to provide funding for innovative, intelligent/advanced transportation, goods movement, demand management and air quality programs which relieve congestion, improve air quality and enhance economic development.
- F. Support legislation creating the Passenger Rail Improvement, Safety and Modernization (PRISM) program so long as funding comes from new sources of revenue.
- G. Support current local program funding and flexibility of mobility projects, such as Freeway Service Patrol (FSP), ridesharing and call boxes.
- H. Support analysis and consensus building efforts for potential new funding strategies for transportation.

4. **Maximize flexibility in the use of existing transportation revenues.**

- A. Request a fair share for San Bernardino County of any state discretionary funding made available for transportation grants or programs.
- B. Support legislative and/or administrative efforts to improve flexibility with the use of GARVEE bonds, funding such as "AB 3090 financing," and/or other available financing mechanisms to ensure that SANBAG is able to fully leverage state and federal transportation funds during the state's current fiscal crisis.
- C. Support legislation to enable county transportation commissions to utilize design-build and design-sequencing for the design and construction of transportation capital improvements to maximize funding and ensure greater efficiency and effectiveness for project delivery.

**4. Maximize flexibility in the use of existing transportation revenues. (Continued)**

- D. Increase state flexibility to implement performance-based infrastructure projects and public-private partnerships (P3), including innovative finance programs.
- E. Support legislation to ensure that funding for transit operations is commensurate with existing and new demands placed on public transit by air quality and congestion management programs, CalWORKS (welfare to work reform), the Americans with Disabilities Act, including the use of social service funding sources.
- F. Support income tax benefits or incentives that encourage use of alternative fuel vehicles and alternative modes of transportation without reducing existing transportation funding levels. Monitor and, where appropriate, support studies of market-based pricing measure to relieve traffic congestion, improve air quality and/or fund transportation alternatives.
- G. Support legislation to finance cost effective conversion of public transit fleets to alternative fuels.
- H. Work with the State Administration to develop a formal state-level coordination effort with various social service programs to identify transportation needs and funding opportunities for the provision of social service transportation.
- I. Support legislative studies to consider alternative funding for transportation.

**5. Streamline administrative and regulatory processes.**

- A. Support legislation and/or administrative reforms to enhance Caltrans project delivery, such as simultaneous Environmental Impact Report (EIR) and engineering studies, and a reasonable level of contracting out of appropriate activities to the private sector.
- B. Support efforts to simplify and improve the local administration of Transportation Development Act Funds.



# **San Bernardino Associated Governments 2009 Federal Legislative Program**

## **Mission Statement**

*"SANBAG's mission is to enhance the quality of life for all residents in San Bernardino County by improving cooperative regional planning, developing an accessible, efficient, multi-modal transportation system, strengthening economic development efforts and exerting leadership in creative problem solving."*

## **OVERALL OBJECTIVES**

1. Increase advocacy efforts.
2. Protect and optimize current funding levels for transportation programs.
3. Protect and enhance flexibility in use of transportation revenue.
3. Reduce or eliminate costly and duplicative administrative and regulatory requirements.

## **FEDERAL LEGISLATIVE PROGRAM**

### **1. Increase Advocacy Efforts.**

- A. Provide information to Congress to demonstrate the need for an increased federal role for funding transportation infrastructure projects.
- B. Transportation Appropriations: SANBAG will focus on its effort to continue advocating from projects already federalized and projects that will improve freight movement throughput, mobility and safety in the region.
- C. Transportation Reauthorization: SANBAG will strengthen its regional approach by working with advocates from local jurisdiction to seek similar priorities where applicable.
- D. Increase efforts to advocate for issues relating to housing, water and economic development as directed by the SANBAG Board of Directors.

### **2. Protect and optimize current funding levels for transportation programs.**

- A. Seek a more equitable appropriation of highway trust funds for donor states, which includes California, as well as a fair share for San Bernardino County of any Federal funding made available for transportation programs and projects.
- B. Support efforts to correct disproportionate share of funding for the Federal Transit and Highway program via the highway trust fund.
- C. Seek legislation to correct the reduction to the Federal Highway Trust Fund (HTF) due to the Federal subsidy of ethanol-based fuels, as well as, to compensate California's reduced HTF apportionment level due to the implementation of ethanol-blended fuel in 2003.

- D. Support continued Federal commitment of funds to support public transit, to assure that California and the western states receive a fair share of the AMTRAK funding resources as compared to the North East Corridor.
- E. Seek specialized funding for goods movement projects of international and national significance that are beyond the funding ability or responsibility of local and state transportation programs and budgets, including the ability to levy locally administered fees to mitigate the costs resulting from the impact of goods movement on local transportation infrastructure, i.e. a state and/or regional container fee.
- F. In support of the 5-County Joint Venture - representing the five Southern California County Transportation Commissions, the Southern California Association of Governments (SCAG), and the Los Angeles Economic Development Commission (LAEDC), as well as private sector companies, including the railroads - to support legislative efforts to create a regional goods movement program currently referred to as the "West Coast National Freight Gateway Program."
- G. Seek funding for airport ground access and other airport development needs in San Bernardino County.
- H. Seek continued funding to implement and maximize the efficient use of the transportation network, as well as Federal funding to provide for enhance homeland security/emergency operations services as an additional component of the center's functionality.
- I. Support the Southern California Consensus Group, a coalition of transportation stakeholders, that supports project delivery using a regional corridor system plan and corridor share approach to ensure the fair distribution of funding, promote local contributions to projects and address community quality of life concerns throughout the Southern California region. This is a comprehensive list of the Southern California stakeholders: San Bernardino Associated Governments, Riverside County Transportation Commission, Los Angeles county Metropolitan Transportation Authority, Orange County Transportation Authority, Ventura County Transportation Commission, Alameda Corridor Transportation Authority, Alameda Corridor East Construction Authority, Southern California Regional Rail Authority, the Ports of Los Angeles/Long Beach/Hueneme, South Coast Air Quality Management District and Southern California Associated Governments.
- J. Support analysis and consensus building efforts for potential new funding strategies for transportation.

**3. Protect and enhance flexibility in use of transportation revenue.**

- A. Support legislation that will modify federal project development requirements for transit projects to make them more consistent with the process employed for highway projects.

- B. Support legislation to exempt commuter rail services operating within existing railroad right-of-way from federal new start and alternative analysis requirements in order to utilize Federal funding.
- C. Support efforts to pursue funds to facilitate timely conversion of public sector fleets to alternative fuels to meet Federal fleet conversion mandates.
- D. Support tax benefits and/or incentives for transportation demand management programs and alternative fuel programs to promote the use of alternate modes of transportation.
- E. Seek funding for Alameda Corridor East improvement projects, which includes the Freight Corridor generally described as the Union Pacific Railway and the Burlington Northern Santa Fe Railway Mainline tracks from East Los Angeles (terminus of the Alameda Corridor) through Los Angeles, Orange, Riverside, and San Bernardino Counties. Support increased federal funding opportunities for San Bernardino and Riverside Counties to access these funding sources. Seek continued federal funding of Maritime Administration studies focusing on an "Inland Rail Port" in San Bernardino County and Riverside County.
- F. Support legislation that ensures coordination of transportation and social service agency funding (i.e. Departments of Aging, Rehabilitation, and Welfare).
- G. Support legislative or administrative policies that promote a "regional" approach to airport development and usage of Southern California Logistics, San Bernardino International, and Ontario International airports and the March Joint Use Airport.

**4. Reduce or eliminate costly and duplicative administrative and regulatory requirements.**

- A. Support legislation and/or administrative reforms that result in cost and time savings to environmental clearance processes for transportation construction projects.
- B. Work with the Administration and the San Bernardino Congressional delegation to reach an equitable resolution to the Federal Highway Administration (FHWA) retroactive interpretation of Americans with Disabilities Act (ADA) compliance guidelines that would require the use of alternative or restricted funding for costly curb-ramp upgrades within the boundaries of all federally-aided projects. Specifically, seek an exemption for Congestion Mitigation and Air Quality (CMAQ) projects that do not necessitate ground alteration or disturbance, including wireless technology and traffic synchronization.
- C. Oppose legislative changes to alter the formula by which Congestion Management and Air Quality (CMAQ) funds are allocated to states. More specifically, oppose attempts to change the weighting factors assigned to nonattainment areas for the purpose of determining each state's share of CMAQ funds, as well as to assure that the funding continues to be allocated directly to the transportation commission and that the use of this funding program remain flexible and at the discretion of the county transportation commission.

- D. Support administrative or legislative action to ensure consistency among the Federal congestion management and the State's Congestion Management Program requirements.
- E. Monitor and, where appropriate, support studies of market-based pricing measures to relieve traffic congestion, improve air quality and/or fund transportation alternatives.
- F. Seek Federal authorization allowing states, where appropriate to pursue options to privatize various aspects of transportation to increase the efficiencies and effectiveness of their available resources through private sector participation.
- G. Support legislation and/or administrative reforms to enhance Caltrans project delivery, such as simultaneous Environmental Impact Report (EIR) and engineering studies, and a reasonable level of contracting out of appropriate activities to the private sector.
- H. Continue to streamline Federal reporting/monitoring requirements to ensure efficiency and usefulness of data collected and eliminate unnecessary and/or duplicative requirements.

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- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies
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## *Minute Action*

### AGENDA ITEM: 14

**Date:** December 3, 2008

**Subject:** Amendment No. 1 to Construction Cooperative Agreement No. 08-164 (District Agreement No. 8-1322) with Caltrans and the City of Rialto for Interstate 10/Riverside Avenue Interchange Project.

**Recommendation:\*** Approve Amendment No. 1 to Cooperative Agreement No. 08-164 with Caltrans and the City of Rialto for the Interstate-10/Riverside Avenue Interchange Project construction activities.

**Background:** This is an amendment to an existing cooperative agreement. Under State law, SANBAG and Caltrans are required to enter into cooperative agreements for all phases of a project. The Board approved the original construction cooperative agreement between SANBAG, City of Rialto, and Caltrans at its June 4, 2008 meeting.

The California Transportation Commission approved \$14,097,000 from Trade Corridor Improvement Fund (TCIF) toward construction of this project in April 2008. The financial exhibit of the original cooperative agreement did not include the TCIF funds. Caltrans later determined that the TCIF funds must be made a part of the financial exhibit to allow reimbursement. Furthermore, an error was noticed in project postmiles that identify the limits of the project and has been corrected in this amendment.

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*Approved*  
*Board of Directors*

*Date:* December 3, 2008

*Moved:* *Second:*

*In Favor:* *Opposed:* *Abstained:*

*Witnessed:* \_\_\_\_\_

***Financial Impact:*** No new financial impact to SANBAG is associated with this action.

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. SANBAG Counsel has reviewed and approved the agreement as to form. (*Meeting Chaired by John Pomierski*)

***Responsible Staff:*** Garry Cohoe, Director of Freeway Construction

**SANBAG Contract No. C08-164-01**

by and between

San Bernardino County Transportation Authority

and

California Department of Transportation and City of Rialto

for

I-10 Riverside Interchange Construction Cooperative Agreement**FOR ACCOUNTING PURPOSES ONLY**

<input type="checkbox"/> Payable	Vendor Contract # <u>8-1322</u>	Retention:	<input type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID _____	<input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Amendment

Notes:

Original Contract:	\$ <u>0</u>	Previous Amendments Total:	\$ <u>0</u>
Contingency Amount:	\$ <u>0</u>	Previous Amendments Contingency Total:	\$ <u>0</u>
		Current Amendment:	\$ <u>0</u>
		Current Amendment Contingency:	\$ <u>0</u>

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL →** \$ 0

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date: 06/04/08 Contract Start: 06/04/08 Contract End: 12/31/14New Amend. Approval (Board) Date: 12/03/08 Amend. Start: 12/03/08 Amend. End: 12/31/14**If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:**

<b>Approved Budget Authority →</b>	Fiscal Year: _____ \$ _____	<b>Future Fiscal Year(s) – Unbudgeted Obligation →</b>	\$ _____
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Is this consistent with the adopted budget? ☐ Yes ☐ No

If yes, which Task includes budget authority? \_\_\_\_\_

If no, has the budget amendment been submitted? ☐ Yes ☐ No**CONTRACT MANAGEMENT****Please mark an "X" next to all that apply:**☒ Intergovernmental ☐ Private ☐ Non-Local ☐ Local ☐ Partly LocalDisadvantaged Business Enterprise: ☐ No ☐ Yes \_\_\_\_\_ %Task Manager: **Garry Cohoe**Contract Manager: **Abunnasr Husain**

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

Filename: C0816401.docx

08-SBd-10-PM 18.7/20.8  
I-10/Riverside Avenue  
Reconstruct Interchange  
And ramp improvements  
EA 422304  
District Agreement No. 8-1322 A/1

## **AMENDMENT NO. 1 TO AGREEMENT NO. 8-1322**

This AMENDMENT NO. 1 to AGREEMENT NO. 8-1322, entered into effective on \_\_\_\_\_, 2008, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY, a public  
entity referred to herein as "AUTHORITY"

and

CITY OF RIALTO, a body politic and a municipal  
corporation of the State of California, referred to  
herein as "CITY."

### **RECITALS**

1. STATE, AUTHORITY, and CITY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to State Highways System (SHS) within CITY's jurisdiction.
2. The parties hereto entered into an Agreement No. 8-1322, on July 17, 2008, said Agreement defining the terms and condition of project to reconstruct interchange and ramp improvements at Interstate 10 (I-10)/Riverside Avenue in the City of Rialto, referred to herein as "PROJECT."
3. It has been determined that the Post Miles on the original agreement were incorrect. The correct PROJECT Post Miles are 18.7/20.8. Also on April 10, 2008, Resolution TCIP-P-0708 programmed \$14,097,000 from the Trade Corridor Improvement Funds (TCIF) as part of the PROJECT construction capital.
4. CITY agrees to be responsible for one hundred (100%) percent of all PROJECT construction capital and support costs (of which a portion will be funded out of STATE's Transportation Improvement Program/Regional Improvement Program [STIP/RIP]



funding source in the amount of \$1,452,000 and TCIF funding source in the amount of \$14,097,000). The PROJECT cost estimate is \$28,200,000 as shown on Exhibit A, attached hereto and made a part of this Agreement. If it becomes necessary for an increase in PROJECT funding, said increase will be paid in full by CITY.

5. Revised Exhibit A and B will, by this Amendment, be attached and made a part of Agreement 8-1322.

**IT IS THEREFORE MUTUALLY AGREED**

1. SECTION I, "CITY AGREES," Article (1) of the original Agreement is replaced in its entirety to read as follows:

"To be responsible for one hundred (100%) percent of all PROJECT capital and support costs (of which a portion will be funded out of STATE's STIP/RIP funding source in the amount of \$1,452,000 and TCIF funding source in the amount of \$14,097,000) including, but not limited to, "State-furnished material," and source inspection. If it becomes necessary for an increase in PROJECT funding, said increase will be paid in full by CITY."

2. SECTION I, "CITY AGREES," Article (7) of the original Agreement is replaced in its entirety to read as follows:

"To submit an initial billing in the amount of \$81,000 to STATE within thirty (30) days upon award of construction contract to be paid from STIP/RIP and TCIF funds, which is to be used for a portion of construction capital costs.

Thereafter, to prepare and submit to STATE monthly billing statements for estimated expenditures for construction capital one (1) month in advance as construction of PROJECT proceeds up to a maximum amount of \$15,549,000."

3. SECTION III, "STATE AGREES," Article (7) of the original Agreement is replaced in its entirety to read as follows:

To allocate \$1,452,000 from STATE's STIP/RIP funding source to PROJECT. The California Transportation Commission (CTC) programmed these funds at the June 6, 2007, meeting for construction capital and support services for PROJECT. Also CTC allocated \$14,097,000 from TCIF funding source on April 10, 2008.

4. SECTION III, "STATE AGREES," Article (8) of the original Agreement is replaced in its entirety to read as follows:

To deposit with CITY within twenty-five (25) days of receipt of billing therefore (which billing will be forwarded immediately following upon award of construction contract),

the amount of \$81,000. Said figure represents STATE's initial deposit for one (1) month estimated construction capital required for PROJECT. STATE's total obligation for said PROJECT costs, using STIP/RIP and TCIF funds, which is to be used for a portion of construction capital cost, shall not exceed the amount of \$15,549,000.

5. Exhibit A and B of the original Agreement are hereby replaced in their entirety by the attached revised Financial Letter, Exhibit A and a Contribution Letter, Exhibit B dated August 6, 2008.
6. The Post Miles shown on the original Agreement are hereby corrected to read Post Miles 18.7/20.8.
7. The other terms and conditions of said Agreement No. 8-1322 shall remain in full force and effect
8. This Amendment to Agreement is hereby deemed to be a part of Agreement No. 8-1322.

SIGNATURES ON FOLLOWING PAGES:

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

WILL KEMPTON  
Director

By: \_\_\_\_\_  
RAYMOND W. WOLFE, PhD, ME, CE  
District Director

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
Attorney,  
Department of Transportation

CERTIFIED AS TO FUNDS:

By: \_\_\_\_\_  
District Budget Manager

CERTIFIED AS TO FINANCIAL  
TERMS AND POLICIES:


By: \_\_\_\_\_  
Accounting Administrator

SAN BERNARDINO COUNTY  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
GARY C. OVITT  
President, Board of Directors

Attest: \_\_\_\_\_  
VICKI WATSON  
Board Secretary

APPROVED AS TO FORM AND  
PROCEDURE:

By:  \_\_\_\_\_  
JEAN-RENE BASLE  
AUTHORITY's Counsel

CITY OF RIALTO

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
CITY Clerk

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
CITY Counsel

FINANCE LETTER FOR LOCALLY ADMINISTERED PROJECTS

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ACCOUNTING  
LOCAL PROGRAM ACCOUNTING BRANCH

Project Sponsored by:  
1) State ?  
2) Local Agency? X

Date: 8/6/2008  
EA # (Current Phase): 422304  
Local Programs Project #: 08-412254L  
Contributor Agency: Rialto  
Agreement #: 8-1322 A/1

ATTN:

Project Location:		In San Bernardino County, on Interstate Route 10 from PM 18.7 to PM 20.8 Reconstruct Interchange and Ramp Improvements										
State Administered Phases of Work **		Local Program Funds			Local Program Funds			State Funds			Local Funds	
		Federal %: 80.00	Match %: 20.00	Fund Type: DEMO	Federal %: 90.00	Match %: 10.00	Fund Type: Local	Fund Type: STIP/RIP	Fund Type: TCIF	Fund Type: Local	Totals	
Phase	Pgm Code	Pgm Code	Pgm Code	Pgm Code	Pgm Code	Pgm Code	Pgm Code	Pgm Code	Pgm Code	Pgm Code	Pgm Code	
STATE SUPPORT												
PS/Environmental	0"	\$0	\$0	\$0	\$0	\$0					\$0	
Design	1"	\$0	\$0	\$0	\$0	\$0					\$0	
R/W Support	2"	\$0	\$0	\$0	\$0	\$0					\$0	
Construction Engineering	3"	\$0	\$0	\$0	\$0	\$0					\$3,700,000	
STATE CAPITAL												
R/W Capital	9"	\$0	\$0	\$0	\$0	\$0						
Construction Capital	4"	\$1,600,000	\$400,000	\$2,857,050	\$317,450	\$1,452,000	\$14,097,000	\$3,776,500	\$14,097,000	\$7,476,500	\$24,500,000	
TOTALS		\$1,600,000	\$400,000	\$2,857,050	\$317,450	\$1,452,000	\$14,097,000	\$7,476,500	\$14,097,000	\$7,476,500	\$28,200,000	

**NOTES:**  
 > Identify type of Local Program Funds such as RSTP, DEMO, CMAQ, and type of match funds such as STIP Match, TCIF, SECTP, Local Sales Tax, with reimbursement percentages. Also include copy of allocation letter with STIP Match.  
 > Identify other funds which include State-Federal Funds such as STIP RIP, STIP RIP, State funds such as SECTP, TCIF and Local funds such as Sales Tax, Portofair funds, etc.  
 > Provide Program codes such as 20.10... (State Support), 20.20... (State Capital), see: <http://dot.state.ca.gov/ASCCodingManual/ASCCodingManual.htm>  
 \* Identify Co-op Agreement / or Contribution Agreement / (include copy of the agreement if not already provided to Local Program)  
 \*\* Identify any Sub Jobs for each phase and fund source if applicable (identify in remarks)  
 \*\*\* Include All the funds required for the current phase and all the Local Program Funds / Match Identified in previous phases (include any changes)

(1) Project Manager Name: Anthony Liao Calnet: \_\_\_\_\_ Signature: \_\_\_\_\_  
 (2) Program Coordinator Name: \_\_\_\_\_ Calnet: \_\_\_\_\_ Signature: \_\_\_\_\_  
 (3) OLP Area Engineer Name: \_\_\_\_\_ Calnet: \_\_\_\_\_ Signature: \_\_\_\_\_

**REMARKS:**

**ATTACHMENTS:** RTIP/FTP Using / Amendments \_\_\_\_\_ Federal Authorization (E76) \_\_\_\_\_ Agreements \_\_\_\_\_ Allocation Letter: \_\_\_\_\_  
 Environmental Clearance \_\_\_\_\_ RW Certification \_\_\_\_\_

EXHIBIT "A"

**Contribution Letter for Locally Administered Projects**

Date 8/6/2008  
 Local Agency Rialto  
 Agreement No. 08-1322 A/1  
 State E. A. No. 08-SBd-422304  
 Amendment No.

Local - Federal Fund Type	Local - Federal Contributor Amount	Reimbursement Ratio	Match Fund Type	Match Amount	Current Total	Previous Total	Proposed Change
DEMO	\$1,600,000	80.00%	Local	\$400,000	\$2,000,000		
IMD	\$2,857,050	90.00%	Local	\$317,450	\$3,174,500		
STIP	\$1,452,000	100.00%	N/A	N/A	\$1,452,000		
TCIF	\$14,097,000	100.00%	N/A	N/A	\$14,097,000		

Comments:

Notes:

**EXHIBIT "B"**

## *Minute Action*

### AGENDA ITEM: 15

**Date:** December 3, 2008

**Subject:** Construction advertising and bid package approval for SR-210 Establish Existing Planting Work for Segment 3 in the City of Rancho Cucamonga.

**Recommendation:\***

1. Approval of bid package (C09083) and authorization to staff to proceed with advertising for SR-210 Establish Existing Planting Work for Segments 3 in the City of Rancho Cucamonga.
2. Authorize staff to proceed directly to the SANBAG Board with contract award.

**Background:** This action will lead to a new Establish Existing Planting Work maintenance contract. In 2005/2006 the Landscape Project for Segment 3 SR- 210 in the City of Rancho Cucamonga was awarded to include the landscape construction and one year of maintenance by the landscape construction contractor which is scheduled for completion in January 2009. To fulfill SANBAG'S requirement for three years of landscape maintenance for SR-210 Segment 3, advertising of a new bid package and contract award for an additional two years of landscape maintenance is required. Utilizing a landscape maintenance contract versus the construction contract for the additional 2 year maintenance period provides a significant savings because of the lower prevailing wage rates for maintenance workers. Water cost will also be transferred directly to SANBAG for the remainder of the maintenance period.

\*

*Approved  
 Board of Directors*

*Date: December 3, 2008*

*Moved: Second:*

*In Favor: Opposed: Abstained:*

*Witnessed: \_\_\_\_\_*



The estimated cost for two years of landscape maintenance is \$590,000 which includes a \$120,000 allowance for the purchase of irrigation water from the Cucamonga Valley Water District.

Staff has requested that this item go directly to the Board for contract award. The existing landscape contract is scheduled for completion in January 2009. Going to the Major Project Committee and then Board has the potential to result in a gap in the maintenance on this section of freeway.

***Financial Impact:*** This action is consistent with the 2008/2009 budget. TN 82409000.

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Major Projects Committee on October 9, 2008. Counsel has reviewed and approved this contract as to form. (*Meeting Chaired by John Pomierski*).

***Responsible Staff:*** Garry Cohoe, Director of Freeway Construction



**NOTICE TO CONTRACTORS  
AND  
PROPOSAL and CONTRACT**

**TO ESTABLISH EXISTING PLANTING WORK ON**

**State Highway 210**

**IN  
SAN BERNARDINO COUNTY  
IN THE CITY OF RANCHO CUCAMONGA, CALIFORNIA  
(SEGMENT 3)**

**Contract No. 09083**

**Name of Bidder: \_\_\_\_\_**

**SEALED BIDS MUST BE RECEIVED AT:  
San Bernardino Associated Governments (SANBAG)  
1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, California 92410-1715**

**BIDS MUST BE RECEIVED BY:  
December 23, 2008**

**San Bernardino Associated Governments  
Deborah Barmack      Executive Director**

**Garry Cohoe, P.E.      Director of Freeway Construction**

**December 3, 2008**

**Local EA: 08-1A2804**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS  
NOTICE TO CONTRACTORS**

Sealed proposals for the work shown on the Plans entitled:

**FOR ESTABLISH EXISTING PLANTING WORK ON**

**STATE HIGHWAY 210**

**IN**

**SAN BERNARDINO COUNTY**

**IN THE CITY OF RANCHO CUCAMONGA, CALIFORNIA**

**ESTABLISH EXISTING PLANTING**

**(SEGMENT 3)**

**Contract No. 09083**

**MUST be delivered to and received by:**

**Location: San Bernardino Associated Governments  
1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor  
San Bernardino, CA 92410-1715**

**Phone: (909) 884-8276**

**NO LATER THAN 2:00 p.m. on December 23, 2008.** Bidders are responsible for ensuring that their **ENTIRE** proposal package is received in the office by the time and date specified above and that the **ENTIRE** original proposal forms in the Proposal and Contract Document package are all filled out and returned. No copies of proposal forms will be allowed unless otherwise stated elsewhere in the proposal. If any forms are not filled out or are missing, the bid may be considered at San Bernardino Associated Government's discretion to be non-responsive and subject to rejection. Any proposals that are not timely received in the office shall be returned unopened.

**NOTE: The Contractor shall clearly label his/her sealed proposal package with (1) the company name and address; and (2) the following words in large visible print on all sides of the sealed proposal package:**

**Sealed Proposal Package for  
State Highway 210  
ESTABLISH EXISTING PLANTING  
(Segment 3)  
DO NOT OPEN!!!**

**Bids will be opened and read aloud on December 23, 2008 at approximately 2:00 p.m.**

## General description of work:

The main component of this project is plant establishment work on State Highway 210 (SR-210) from Cucamonga Creek Channel to the Centerline of Hermosa Avenue Overcrossing in the City of Rancho Cucamonga.

At the time this Contract is awarded, the Contractor shall possess a Class A Contractor's License or other license qualifying the bidder to bid as a prime Contractor. The Contract is subject to State Contract Nondiscriminatory and Compliance Requirements pursuant to Government Code, Section 12900.

The selected contractor shall be properly licensed in accordance with the laws of the State and policies of SANBAG. Contractor shall possess a Type "A" license, or other license qualifying the bidder to bid as a prime Contractor, prior to award of Contract as approved by Board of Directors.

The Plans, Special Provisions, and Proposal Forms for bidding this project can only be obtained at the SANBAG construction office at 2700 Little Mountain Drive, Suite B-101, San Bernardino, CA 92405. Contact Linda Smoot at (909) 875-6029, ext 205 or cell (909) 376-1582. A non-refundable fee, as follows, is due upon receipt or prior to mailing. **Only checks or money orders will be accepted as payment for the fee; no cash will be accepted.**

Reduced plan set (1 plan set)	\$ 30.00
Specials and Proposal (2 vols.)	\$ 25.00

These items will not be available prior to **December 8, 2008**. Requests shall include: Company Name; Contact Person; Telephone Number, Fax Number, deliverable address and FedEx, UPS or other delivery account number.

Bid questions must be submitted to Linda Smoot **NO LATER THAN 12:00 noon on December 19, 2008**. Responses will be sent to all plan holders by 3:00 pm on December 22, 2008.

A proposal Guaranty in the form of a Bidders Bond in the amount of 10% of the bid amount will accompany each bid. After award, the successful Bidder shall furnish a Payment Bond and Performance Bond in the amount of 100% of the bid per the requirements in the Contract Documents.

San Bernardino Associated Governments (SANBAG) has not established a contract-specific DBE goal for this contract; however, the Bidder is urged to ensure that DBE's are given an equitable opportunity to participate on this contract consistent with SANBAG's policy.

The Bidder shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any subcontractors/subconsultants. Failure to carry out the requirements of this paragraph shall constitute a breach of contract and may result in termination of this contract or such other remedy SANBAG may deem appropriate.

Pursuant to Section 1773 of the Labor Code, of the State of California, the General Prevailing Wage Rates in the County in which work is to be done have been determined by the Director of the California Department of Industrial Relations. These wage rates are listed in the California Department of Industrial Relations Publication entitled, "General Prevailing Wage Rates" latest publication. Future effective General Prevailing Wage Rates that have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the General Prevailing Wage Rates.

The Contractor, at Contractor's expense, may elect to receive 100% of payments due under the Contract document from time to time, without retention from any portion of the payment by the San Bernardino Associated Governments, by depositing securities of equivalent value of the retained amount with the San Bernardino Associated Governments in accordance with the provisions of Section 22300 of the Public Contract Code. Such securities, if deposited by the Contractor, shall be valued by the San Bernardino Associated Governments, whose decision on valuation of the securities shall be final. Securities eligible for investment under this provision shall be limited to those listed in Section 22300 of the Public Contract Code and Section 16430 of the California Government Code.

The San Bernardino Associated Governments reserves the right to reject any or all bids, and to waive any irregularities in any proposal or bid, and to determine which proposal is, in its judgment, the lowest responsive bid of a responsible bidder and which proposal should be accepted in the best interest of the San Bernardino Associated Governments. No bids will be accepted unless made on the Proposal Form provided under a separate package. Meeting the goal for DBE participation or demonstrating to the satisfaction of SANBAG, adequate good faith efforts to do so, is a condition for being eligible for award of contract. Bids are required for the entire work described herein.

No bid may be withdrawn within sixty days (60) after the scheduled bid opening date.

By order of the Governing Board of the San Bernardino Associated Governments  
Dated: December 3, 2008

Garry Cohoe, P.E.  
Director of Freeway Construction

Date of Advertisement: December 8, 2008

## TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
PROPOSAL TO THE SAN BERNARDINO ASSOCIATED GOVERNMENTS .....	1
SCHEDULE A & B – BID LISTS .....	3
NONCOLLUSION AFFIDAVIT .....	4
LISTING OF SUBCONTRACTORS .....	5
EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION .....	6
BIDDERS STATEMENT REGARDING INSURANCE COVERAGE .....	7
PUBLIC CONTRACT CODE SECTION 10232 STATEMENT .....	8
TITLE 49, CODE OF FEDERAL REGULATIONS, .....	9
PART 29 DEBARMENT AND SUSPENSION CERTIFICATION .....	9
PROPOSAL SIGNATURE PAGE .....	12
BIDDER’S BOND .....	13
PAYMENT BOND FORM .....	21
PERFORMANCE BOND FORM .....	22

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**State Highway 210**  
**In the City of Rancho Cucamonga, California**  
**ESTABLISH EXISTING PLANTING**  
**Contract No.: 09083**  
**Bid Opening: December 23, 2008**

**PROPOSAL TO THE SAN BERNARDINO ASSOCIATED GOVERNMENTS**

Name of Bidder: \_\_\_\_\_

Business P.O. Box: \_\_\_\_\_

Business Street Address: \_\_\_\_\_  
(Please include even if P.O. Box is used)

City, State, Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Honorable Board Members of the San Bernardino Associated Governments:

The work for which this proposal is submitted is for the construction in accordance with the Special Provisions and the project plans described below, including Addendum Numbers, \_\_\_\_\_, thereto, the Contract annexed hereto, and also State of California Department of Transportation Standard Plans dated May 2006 and Standard Specifications dated May 2006 and safety related portions dated May 2006 and latest updates, the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, and the General Prevailing Wage Rates most current edition at the date of the bid opening.

The undersigned acknowledges:

The Highway Construction Project Plans dated August 30, 2005 (for reference only) and Notice to Contractors and Special Provisions dated December 3, 2008 for the work to be done are entitled:

**ESTABLISH EXISTING PLANTING WORK ON**  
**State Highway 210**  
**IN THE CITY OF RANCO CUCAMONGA, CALIFORNIA**

Bids are required for the entire work. The amount of the bid for comparison purposes will be the total of all items. The total of unit basis items will be determined by extension of the item price bid on the basis of the estimated quantity set for the item.

The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the Item Total column shall be the product of the unit price bid and the estimated quantity for the item.

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**State Highway 210**  
**In the City of Rancho Cucamonga, California**  
**ESTABLISH EXISTING PLANTING**  
**Contract No.: 09083**  
**Bid Opening: December 23, 2008**

**PROPOSAL TO THE**  
**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**(Continued)**

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, provided however, if the amount set forth as a unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Item Total" column, then the amount set forth in the "Item Total" for the item shall prevail in accordance with the following:

1. As to lump sum items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the item price.
2. As to unit basis items, the amount set forth in the "Total" column shall be divided by the estimated quantity for the item and the price thus obtained shall be the item price.

If this proposal shall be accepted and the undersigned shall fail to enter into the Contract and furnish the two bonds in the sums specified in the contract documents, with surety satisfactory to the San Bernardino Associated Governments, within ten (10) days, not including Saturdays, Sundays, and legal holidays, after the Bidder has received notice from the San Bernardino Associated Governments, that the contract has been awarded, the San Bernardino Associated Governments may, at its option, determine that the Bidder has abandoned the Contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of such security accompanying this proposal shall operate and the same shall be the property of the San Bernardino Associated Governments.

The undersigned, as Bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm or corporation; that the Bidder has carefully examined the location of the proposed work, the annexed proposed form of Contract, any addenda, having become thoroughly familiar with the terms and conditions of the Contract Documents and with the local conditions affecting the performance and cost of the Work at the place where the Work is to be done, and the Bidder hereby proposes, and agrees if this proposal is accepted, that the Bidder will contract with the San Bernardino Associated Governments, in the form of the copy of the Contract annexed hereto, to provide all necessary labor, machinery, tools, apparatus, and other means of construction, and to do all the work and furnish all the materials specified in the Contract, in the manner and time therein prescribed, and in accordance with the requirements of the Engineers as therein set forth, and that he will take in full payment therefore the following prices, to wit:



**SCHEDULE A – BID LIST**

ITEM NO	ITEM CODE	ITEM DESCRIPTION	UNIT OF MEASURE	QUANTITY	UNIT PRICE	ITEM TOTAL
1	204099	ESTABLISH EXISTING PLANTING - SEGMENTS 3 (2 yrs)	LS	1		
		<b>SCHEDULE A TOTAL</b>				

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**State Highway 210**

**In the City of Rancho Cucamonga, California**

**ESTABLISH EXISTING PLANTING**

**Contract No.: 09083**

**Bid Opening: December 23, 2008**

**NONCOLLUSION AFFIDAVIT**

**(Title 23 United States Code Section 112 and Public Contract Code Section 7106)**

In accordance with Title 23 United States Code Section 112 and Public Contract Code 7106, the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

**Note:** The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

I declare under the penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Date:

Principal Officer of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Contractor)

**Note:** Bidders are cautioned that making false certification may subject the certifier to criminal prosecution

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**State Highway 210**

**In the City of Rancho Cucamonga, California**

**ESTABLISH EXISTING PLANTING**

**Contract No.: 09083**

**Bid Opening: December 23, 2008**

**LISTING OF SUBCONTRACTORS**

In compliance with the provisions of Section 4100 et seq. of the Public Contract Code of the State of California, and any amendments thereof, the undersigned has set forth below the name, the address, and a description of the portion of work for each subcontractor who will perform work or labor or render services to the undersigned in or about the construction of the work or improvement to be performed in an amount over \$10,000 or 0.5% of the total contract bid price, whichever is greater.

**Subcontractor:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Description of the portion of work:

\_\_\_\_\_  
Address

\_\_\_\_\_  
Continued (as necessary)

\_\_\_\_\_  
City, State & Zip Code

**Subcontractor:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Description of the portion of work:

\_\_\_\_\_  
Address

\_\_\_\_\_  
Continued (as necessary)

\_\_\_\_\_  
City, State & Zip Code

By: \_\_\_\_\_  
Bidder's Signature

Note: 1) This form may be reproduced and attached behind this page to list more Subcontractors.

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**State Highway 210**

**In the City of Rancho Cucamonga, California**

**ESTABLISH EXISTING PLANTING**

**Contract No.: 09083**

**Bid Opening: December 23, 2008**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

The bidder \_\_\_\_\_, proposed subcontractor \_\_\_\_\_, hereby certifies that the subcontractor \_\_\_\_\_, has \_\_\_\_\_, has not \_\_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor 41 CFR 60-1.7(b) (1), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt).

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**State Highway 210**  
**In the City of Rancho Cucamonga, California**  
**ESTABLISH EXISTING PLANTING**  
**Contract No.: 09083**  
**Bid Opening: December 23, 2008**

**BIDDERS STATEMENT REGARDING INSURANCE COVERAGE**

Bidder hereby certifies that he/she has reviewed the insurance coverage requirements specified in the Contract. Should he/she be awarded the contract for work, Bidder further certifies that he/she can meet all Contract Specification requirements for insurance including insurance coverage of his/her subcontractors.

The above Statement is part of the Proposal. Signing this proposal on the signature portion thereof shall also constitute signature of this statement under penalty of perjury.

---

**PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE**

In accordance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire.

Has the Bidder, any officer of the Bidder, or any employee of the Bidder who has proprietary interest in the Bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No \_\_\_\_\_

If the answer is yes, explain the circumstances in the following space.

The above Statement is part of the Proposal. Signing this proposal on the signature portion thereof shall also constitute signature of this statement under penalty of perjury.

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**State Highway 210**

**In the City of Rancho Cucamonga, California**

**ESTABLISH EXISTING PLANTING**

**Contract No.: 09083**

**Bid Opening: December 23, 2008**

**PUBLIC CONTRACT CODE SECTION 10232 STATEMENT**

In accordance with Public Contract Code Section 10232, the Contractor hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a Federal Court has been issued against the Contractor within the immediately preceding two year period because of the Contractors failure to comply with any order of a Federal Court which orders the Contractor to comply with an order of the National Labor Relations Board.

The above Statement is part of the Proposal. Signing this proposal on the signature portion thereof shall also constitute signature of this statement under penalty of perjury.

---

**PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT**

In accordance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the Bidder hereby declares under penalty of perjury that the Bidder has , has not , been convicted within the preceding three years of any offenses referred to in the section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or Trustees of the California State University.

The term "Bidder" is understood to include any partner, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

NOTE: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

The above Statement is part of the Proposal. Signing this proposal on the signature on the signature portion thereof shall also constitute signature of this statement under penalty of perjury.

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**State Highway 210**  
**In the City of Rancho Cucamonga, California**  
**ESTABLISH EXISTING PLANTING**  
**Contract No.: 09083**  
**Bid Opening: December 23, 2008**

**TITLE 49, CODE OF FEDERAL REGULATIONS,**  
**PART 29 DEBARMENT AND SUSPENSION CERTIFICATION**

The Bidder, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, and manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determined of ineligibility by any federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years

If there are any exceptions to this certification, insert the exception, in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate to whom it applies, initiating agency, and dates of action.

NOTE: Providing false information may result in criminal prosecution or administrative sanctions.

The above Statement is part of the Proposal. Signing this proposal on the signature portion thereof shall also constitute signature of this statement under penalty of perjury.

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**State Highway 210**

**In the City of Rancho Cucamonga, California**

**ESTABLISH EXISTING PLANTING**

**Contract No.: 09083**

**Bid Opening: December 23, 2008**

**PROPOSAL TO THE SAN BERNARDINO ASSOCIATED GOVERNMENTS  
(continued)**

It is understood that San Bernardino Associated Governments reserves the right to reject the proposal and that it shall remain open and not withdrawn for a period of sixty (60) calendar days from the date prescribed for its opening.

The San Bernardino Associated Governments also reserves the right to waive any irregularities in any proposal or bid.

Attached hereto and incorporated herein is the complete and entire list of subcontractors to be employed by the undersigned in the performance of the work.

Notice of acceptance or request for additional information may be addressed to the undersigned bidder at the business address set forth below.

In accordance with the provisions of Section 1860 and 1861 of the California Labor Code, every Contractor will be required to secure the payment of compensation of his employees. Each contractor to whom a public works contract is awarded shall certify that he/she is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of this contract.

The above statement is part of the Proposal. Signing this proposal on the signature portion thereof shall also constitute signature of this statement under penalty of perjury.

Bidder has satisfied themselves by personal examination of the location of the proposed work and by such other means as they prefer as to the actual conditions and requirements of the work, and shall not at any time after submission of the bid, dispute, complain or assert that there was any misunderstanding in regard to the nature of the work to be done.

Accompanying this proposal is \_\_\_\_\_

(Notice: Insert the words "Case", "Cashiers Check", or "Bidders Bond" as the case may be),

made payable to the San Bernardino Associated Governments for the sum of

Dollars (\$ \_\_\_\_\_), in an amount

equal to at least Ten Percent (10%) of the total bid.

If the Cashiers Check or Certified Check accompanies this Proposal as the guarantee, then the proceeds thereof shall become the property of the San Bernardino Associated Governments if, in the case this bid is accepted by the said Board of San Bernardino Associated Governments or Authorized Representative, and such bidder has received notice that the contract has been awarded to him/her, the undersigned shall fail within ten (10) days, not including Saturdays, Sundays and legal holidays, thereafter to execute a Contract with, and furnish the securities required by said Board of San Bernardino Associated Governments or Authorized Representative. Otherwise, such guarantee shall be returned to the undersigned.



**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
State Highway 210  
In the City of Rancho Cucamonga, California  
**ESTABLISH EXISTING PLANTING**  
Contract No.: 09083  
**Bid Opening: December 23, 2008**

**PROPOSAL TO THE SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**(continued)**

The names of all persons interested in the forgoing Proposal as principals are as follows:

**IMPORTANT NOTICE:** If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof authorized to execute this Bid Proposal; If a co partnership, state true name of firm, names of all individual co-partners composing firm; If bidder or other interested person is an individual, state first and last names in full.

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**ADDENDA:** This Proposal submitted with respect to the changes to the Contract included in Addendum

Numbers

\_\_\_\_\_  
(Fill in Addendum Numbers if Addenda have been received)

**WARNING:** If an addendum or Addenda have been issued by the San Bernardino Associated Governments and not noted above on page one (1) of this Proposal as being received by the Bidder, this Proposal may be rejected.

Bidder is licensed in accordance with an act providing for registration of Contractors.

License No. \_\_\_\_\_ Classification(s) \_\_\_\_\_

The license expiration date is \_\_\_\_\_

**The representations made herein are made under penalty of perjury.**

Employers Tax Identification No. \_\_\_\_\_. To comply with Internal Revenue Service requirements, the San Bernardino Associated Governments will report any payments exceeding \$600.00 within a calendar year.

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

State Highway 210

In the City of Rancho Cucamonga, California

**ESTABLISH EXISTING PLANTING**

Contract No.: 09083

**Bid Opening: December 23, 2008****PROPOSAL SIGNATURE PAGE**

By my signature on this Proposal, I certify, under penalty of perjury under the laws of the State of California, that the statements within the foregoing proposal, including, without limitation, the questionnaire and statements provided for in Public Contract Code Sections 10162, 10232 and 10295.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Code of Administrative Regulations). I declare under penalty of perjury that the foregoing is true and correct. This declaration executed in California, at (place) \_\_\_\_\_ on (date) \_\_\_\_\_.

Business Type: (Check only one) Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_

Bid and Certification submitted by: \_\_\_\_\_

Company Name \_\_\_\_\_

SIGN HERE

Signature of Bidder \_\_\_\_\_

Print Name and Title \_\_\_\_\_

**Note:**

If the bidder is a corporation, the legal name of the corporation shall be set forth above with the signature of the officers authorized to sign contracts on behalf of the corporation. If bidder is a co-partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts in behalf of the co-partnership; and if bidder is an individual, his signature shall be placed above. If signature is by an agent, other than an officer of a corporation or member of a partnership, a Power of Attorney must be on file with the San Bernardino Associated Governments prior to opening of bids or submitted with bid; otherwise, the bid will be disregarded as irregular and unauthorized.

Business Address \_\_\_\_\_

Place of Business \_\_\_\_\_

Business Telephone No. \_\_\_\_\_

Fax No. \_\_\_\_\_

Contact Person \_\_\_\_\_

Phone No. \_\_\_\_\_

**NOTE:** If a bidder's bond is used as bidder's security, the Contractor shall use the Bidder's Bond Form included with this Proposal for the project and it shall be properly filled out and executed.

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**State Highway 210**  
**In the City of Rancho Cucamonga, California**  
**ESTABLISH EXISTING PLANTING**  
**Contract No.: 09083**  
**Bid Opening: December 23, 2008**

**BIDDER'S BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That we, \_\_\_\_\_ (Contractor's name) (Hereinafter "Principal"), as principal, and \_\_\_\_\_ (Surety Company) (hereafter "Surety"), as surety for this bond, provide this forfeiture bond to AUTHORITY (hereafter "Owner") as beneficiary. Surety shall be an admitted surety insurer as defined in Section 995.120 of the California Code of Civil Procedure.

Contractor and Surety are firmly bound unto the Owner in the penal sum of Ten Percent (10%) of the total aggregate amount of the bid of the above Principal, submitted by said Principal to AUTHORITY for the work described below (hereafter "Penal Sum"), for the payment of which sum in lawful money of the United States, well and truly to be made, Contractor and Surety bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents. The Penal Sum shall be forfeited in its entirety to AUTHORITY, without consideration as to the amount of actual damages incurred by AUTHORITY, if Principal fails to enter into the Contract for the work described below. However, although Contractor shall be liable for the entire Penal Sum, the liability of Surety shall not exceed the sum of \_\_\_\_\_ regardless of the actual Penal Sum.

The conditions of this obligation is such that a bid to Owner for certain construction specifically described as follows:

**Plant Establishment of**  
**State Highway 210**  
**In the City of Rancho Cucamonga, California**  
**ESTABLISH EXISTING PLANTING**

has been submitted by Principal to Owner and delivered to and received by the Receptionist of the San Bernardino County Transportation Authority located at:

**San Bernardino County Transportation Authority**  
**1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor**  
**San Bernardino, CA 92410-1715**  
**Attention: Garry Cohoe**  
**(909) 889-8611 x135**

**no later than 2:00 PM December 23, 2008**

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

**State Highway 210**

**In the City of Rancho Cucamonga, California**

**ESTABLISH EXISTING PLANTING**

**Contract No.: 09083**

**Bid Opening: December 23, 2008**

**BIDDER'S BOND (continued)**

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this day of \_\_\_\_\_, 2008, A.D.

\_\_\_\_\_  
Name/Title of Principal

Dated \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State and Zip

Dated \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Signature

NOTE: Signatures of those executing for Surety MUST be properly acknowledged.

NOTE: This form may be reproduced for transmittal to the Surety for execution and attached to the front of this the original Bid Bond Form.

**CERTIFICATE OF ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ Before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(s), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

Seal

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**  
**State Highway 210**  
**In the City of Rancho Cucamonga, California**  
**ESTABLISH EXISTING PLANTING**  
**Contract No.: 09083**  
**Bid Opening: December 23, 2008**

THIS AGREEMENT, made and concluded, in duplicate, \_\_\_\_\_ between the San Bernardino County Transportation Authority (referred to hereinafter as "AUTHORITY"), and

\_\_\_\_\_ (referred to hereinafter as "Contractor").

ARTICLE 1.---WITNESSETH, That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by AUTHORITY, and under the conditions expressed in the Performance Bond and Payment Bond, bearing even date with these present, and hereunto annexed, the said Contractor agrees with AUTHORITY, at the Contractor's own proper cost and expense, to do all the work and furnish all the materials, except such as are mentioned in the specifications to be furnished by either AUTHORITY or the State of California, necessary to construct and complete in a good, workmanlike and substantial manner and to the satisfaction of AUTHORITY, the work described in the special provisions and the project plans described below, including any addenda thereto, and also in accordance with California Department of Transportation Standard Plans, dated May 2006, the Standard Specifications, dated May 2006, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished, which said special provisions, project plans, Standard Plans, Standard Specifications, and Labor Surcharge and Equipment Rental Rates are hereby specially referred to and by such reference made a part hereof.

The Highway Construction Project Plans dated August 30, 2005 (for reference only) and Notice to Contractors and Special Provisions dated December 3, 2008 for the work to be done are entitled:

**ESTABLISH EXISTING PLANTING WORK ON**  
**State Highway 210**  
**IN THE CITY OF RANCHO CUCAMONGA, CALIFORNIA**

ARTICLE II.---AUTHORITY hereby promises and agrees with the said Contractor to employ, and does hereby employ, the said Contractor to provide materials to do the work according to the terms and conditions herein contained and referred to, for the prices hereinafter set forth, and hereby contracts to pay the same at the time, in the manner and upon the conditions herein set forth; and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

ARTICLE III.---The State general prevailing wage rates most current edition at the date of the bid opening are hereby made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

ARTICLE IV.---By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

ARTICLE V.--- Contractor agrees to receive and accept the following prices as full compensation for (1) furnishing all materials and for doing all the work contemplated and embraced in this agreement; (2) all loss or damage, arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its acceptance by AUTHORITY, and for all risks of every description connected with the work; (3) all expenses incurred by or in consequence of the suspension or discontinuance of work and (4) well and faithfully completing the work, and the whole thereof, in the manner and according to the plans and specifications, and the requirements of the Engineer under them, to wit:

**ACCEPTED BID  
SCHEDULE IS  
INSERTED HERE  
AFTER AWARD OF  
PROJECT**

ARTICLE VI.---The undersigned agrees to complete the work within the time period as stipulated in Section 4 of the Special Provisions.

ARTICLE VII.---The undersigned hereby certifies that he is currently the holder of a valid license as a contractor in the State of California and that the license is the correct class of license for the work described in the project plans and specifications.

#### ARTICLE VIII

Indemnification - The Contractor agrees to indemnify, defend and hold harmless AUTHORITY, the State of California, City of Rancho Cucamonga, Fluor Corporation, and their authorized offices, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts errors or omissions of any person and for any costs or expenses incurred by AUTHORITY, the State of California, City of Rancho Cucamonga, Fluor Corporation, and their authorized officers, employees, agents and volunteers on account of any claim therefore, except where such indemnification is prohibited by law.

#### ARTICLE IX

Insurance - Without in anyway affecting the indemnity herein provided and in addition thereto the Contractor shall, at the Contractor's expense, procure and maintain insurance on all of its operations with companies acceptable to AUTHORITY as follows. All insurance shall be kept in full force and effect from the beginning of the work through final acceptance by AUTHORITY. In addition, the Contractor shall maintain completed operations coverage with a carrier acceptable to AUTHORITY through the expiration of the patent deficiency in construction statute of repose set forth in Section 337.1 of the Code of Civil Procedure. The policies shall be written by a California admitted carrier with a Best's rating of B++ or better

Workers' Compensation and Employer's Liability Insurance - Workers' Compensation insurance shall be provided in an amount and form to meet all applicable requirements of the Labor Code of the State of California. Employer's Liability Insurance shall be provided in amounts not less than:

- (a) \$1,000,000 for each accident for bodily injury by accident.
- (b) \$1,000,000 policy limit for bodily injury by disease.
- (c) \$1,000,000 for each employee for bodily injury by disease.

Liability Insurance - The Contractor shall carry General Liability and Umbrella or Excess Liability Insurance covering all operations by or on behalf of the Contractor providing insurance for bodily injury liability, and property damage liability for the limits of liability indicated below and including coverage for:

- (a) premises, operations and mobile equipment.
- (b) products and completed operations.
- (c) broad form property damage (including completed operations).
- (d) explosion, collapse and underground hazards.
- (e) personal injury.
- (f) contractual liability.

Liability Limits/Additional Insureds - The limits of liability shall be at least:

- (a) \$1,000,000 for each occurrence (combined single limit for bodily injury and property damage).
- (b) \$2,000,000 aggregate for products-completed operations.
- (c) \$2,000,000 general aggregate. This general aggregate limit shall apply separately to the Contractor's work under this Agreement.
- (d) \$5,000,000 umbrella or excess liability. For projects over \$25,000,000 only, an additional \$10,000,000 umbrella or excess liability (for a total of \$15,000,000). Umbrella or excess policy shall include products liability completed operations coverage and may be subject to \$5,000,000 or \$15,000,000 aggregate limits. Further, the umbrella or excess policy shall contain a clause stating that it takes effect (drops down) in the event the primary limits are impaired or exhausted.

AUTHORITY, the State of California, Fluor Corporation, and City of Rancho Cucamonga, and their authorized officers, employees, agents and volunteers, shall be named as additional insureds under the General Liability and Umbrella Liability Policies with respect to liability arising out of or connected with work or operations performed by or on behalf of the Contractor under this contract. Coverage for such additional insureds shall not extend to liability:



- (1) arising from any defective or substandard condition of the Roadway which existed at or prior to the time the Contractor commenced work, unless such condition has been changed by the work or scope of the work requires the Contractor to maintain existing Roadway facilities and the claim arises from the Contractor's failure to maintain; or
- (2) for claims occurring after the work is completed and accepted unless these claims are directly related to alleged acts or omissions of the Contractor which occurred during the course of the work; or
- (3) to the extent prohibited by Section 11580.04 of the Insurance Code.

The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance. Any other insurance or self insurance maintained by AUTHORITY will be excess only and shall not be called upon to contribute with this insurance. Such additional insured coverage shall be provided by a policy provision or by an endorsement providing coverage at least as broad as Additional Insured (Form B) endorsement form CG 2010, as published by the Insurance Services Office (ISO).

Automotive Liability Insurance – The Contractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The primary limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The umbrella or excess liability coverage required under Article IX "Liability Limits/Additional Insureds," shall also apply to automobile liability.

Waiver of Subrogation Rights - Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against AUTHORITY, the State of California, Fluor Corporation, City of Rancho Cucamonga, and their authorized officers, employees, agents and volunteers, contractors and subcontractors.

Policy Forms, Endorsements and Certificates – The Contractor's General Liability Insurance shall be provided under Commercial General Liability policy form No. CG0001 as published by the Insurance Services Office (ISO) or under a policy form at least as broad as policy form No. CG0001.

Evidence of insurance in a form acceptable to AUTHORITY, including the required "additional insured" endorsements, shall be furnished by the Contractor to AUTHORITY at or prior to the pre-construction conference. The evidence of insurance shall provide that there will be no cancellation, lapse, or reduction of coverage without thirty (30) days' prior written notice to AUTHORITY. Certificates of Insurance, as evidence of required insurance, for the General Liability, Auto Liability and Umbrella-Excess Liability policies shall set forth deductible amounts applicable to each policy and all exclusions which are added by endorsement to each policy. AUTHORITY may expressly allow deductible clauses, which it does not consider excessive, overly broad, or harmful to interests of AUTHORITY. Standard ISO form No. CG0001 or similar exclusions will be allowed provided they are not inconsistent with the requirements of this section. Allowance of any additional exclusions is at the discretion of AUTHORITY. Regardless of the allowance of exclusions or deductions by AUTHORITY, the Contractor shall be responsible for any deductible amount and shall warrant that the coverage provided to AUTHORITY is consistent with the requirements of this section.

Enforcement – AUTHORITY may take any steps as are necessary to assure Contractor's compliance with its obligations. Should any insurance policy lapse or be canceled during the contract period the Contractor shall, within thirty (30) days prior to the effective expiration or cancellation date, furnish AUTHORITY with evidence of renewal or replacement of the policy. Failure to continuously maintain insurance coverage as herein provided is a material breach of contract. In the event the Contractor fails to maintain any insurance coverage required, AUTHORITY may, but is not required to, maintain this coverage and charge the expense to the Contractor or terminate this Agreement. The required insurance shall be subject to the approval of AUTHORITY, but any acceptance of insurance certificates by AUTHORITY shall in no way limit or relieve the Contractor of the Contractor's duties and responsibilities under the Contract to indemnify, defend and hold harmless AUTHORITY, the State of California, Fluor Corporation, City of Rancho Cucamonga, and their authorized officers, employees, agents and volunteers. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude AUTHORITY from taking other actions as is available to it under any other provision of the contract or law. Failure of AUTHORITY to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at a later date.

Miscellaneous – Nothing contained in the Contract is intended to make the public or any member thereof a third party beneficiary of the Insurance or Indemnity provisions of the Contract, nor is any term, condition or other provision of the Contract intended to establish a standard of care owed to the public or any member thereof.

ARTICLE X.--The undersigned agrees to furnish AUTHORITY with a satisfactory Payment Bond in an amount equal to one hundred percent (100%) of the contract amount and a Performance Bond in an amount equal to one hundred percent (100%) of the contract amount. These bonds shall be secured from a surety company or companies satisfactory to AUTHORITY and shall remain in force and effect for a period of one year following the date of filing of Notice of Completion.

ARTICLE XI.--If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Article VIII, Indemnification.

ARTICLE XII.--The parties acknowledge and agree that this Agreement was entered into and intended to be performed in whole or substantial part in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be the Central District of San Bernardino County. Each party hereby waives any law or rule of court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.

IN WITNESS THEREOF, the parties hereto have caused this contract to be executed on the day and year first above written.

**SAN BERNARDINO COUNTY TRANSPORTATION  
AUTHORITY**

**CONTRACTOR**

BY: \_\_\_\_\_  
Gary C. Ovitt  
President, AUTHORITY Board of Directors

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM AND PROCEDURE

Licensed in accordance with an act providing for registration  
of contractors,

BY: \_\_\_\_\_  
Jean-Rene Basle  
AUTHORITY Counsel

License No. \_\_\_\_\_

DATE: \_\_\_\_\_

Federal Employer Identification Number \_\_\_\_\_

**SAN BERNARDINO ASSOCIATED GOVERNMENTS****State Highway 210****In the City of Rancho Cucamonga, California****ESTABLISH EXISTING PLANTING****Contract No.: 09083****Bid Opening: December 23, 2008****PAYMENT BOND FORM****KNOW ALL MEN BY THESE PRESENTS:**

That the San Bernardino County Transportation Authority of the State of California (Hereinafter referred to as AUTHORITY) and (Hereinafter referred to as Principal) have by written agreement dated \_\_\_\_\_, 2008, entered into a contract identified as:

**CONTRACT No.: 09083** (Hereinafter referred to as the Contract); and

That, pursuant to law and said Contract, and before entering upon the performance of said Contract, the principal is required to file with AUTHORITY a good and sufficient bond to secure the payment of labor and materials claims.

NOW, THEREFORE, said Principal and \_\_\_\_\_ as corporate surety (Hereinafter referred to as Surety), Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California during 1990 (including changes effective Date) published by the Department of Insurance, State of California or successor publications, are held firmly bound unto AUTHORITY in the amount of \$ \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named or referred to in Section 3181 of the California Civil Code, or amounts due under Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor as required by Division 3, Part 4, Title XV, Chapter 7 (commencing at Section 3247) of the California Civil Code, or this bond, then said Surety will pay for the same, in an amount not to exceed the amount hereinafter set forth.

This bond shall insure to the benefit of any and all persons, companies and corporations named or referred to in Section 3181 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by AUTHORITY and judgment is recovered, Surety shall pay all costs incurred by AUTHORITY in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By

\_\_\_\_\_  
Attorney-in-Act

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address

NOTE: Signature of those executing for Surety must be properly acknowledged.

**SAN BERNARDINO ASSOCIATED GOVERNMENTS****State Highway 210****In the City of Rancho Cucamonga, California****ESTABLISH EXISTING PLANTING****Contract No.: 09083****Bid Opening: December 23, 2008****I****PERFORMANCE BOND FORM****KNOW ALL MEN BY THESE PRESENTS:**

That the San Bernardino County Transportation Authority of the State of California (Hereinafter referred to as AUTHORITY) and  
 (Hereinafter referred to as Principal) have by written agreement dated \_\_\_\_\_, 2008, entered into a contract identified as

**CONTRACT NO. 09083** (Hereinafter referred to as the Contract); and

That, the Principal is required under the terms and conditions of said Contract to furnish a bond for the faithful performance of Contract.

NOW, THEREFORE, said Principal and \_\_\_\_\_ as corporate surety (Hereinafter referred to as Surety), Surety shall be listed in the Insurance Organizations Authorized by the Insurance Commissioner to Transact Business of Insurance in the State of California during 1990 (including changes effective Date) published by the Department of Insurance, State of California or successor publications, are held firmly bound unto AUTHORITY in the amount of \$ \_\_\_\_\_ (\$ \_\_\_\_\_) for the payment of which Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns both jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the said principal, his/her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall perform all of the covenants, conditions and agreements in said Contract and any alteration made as herein provided, in his/her or their part, to be kept and performed at the time, and in the manner therein specified, and shall indemnify and save harmless, AUTHORITY its officers, agents, and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force, virtue and affect.

And the said Surety, for value received, hereby stipulates and agrees that all alterations, extensions of time, extra and additional work, and other changes authorized by the Specifications or any part of the contract may be made without securing consent of the Surety on this bond, and any such actions shall not in any way affect the obligations of the Surety on this bond. Surety does hereby waive notice of any alterations, extensions of time, extra and additional work to the terms of the Contract or to the Specifications.

In the event suit is brought upon this Bond by AUTHORITY and judgment is recovered, Surety shall pay costs incurred by AUTHORITY in such suit, including a reasonable attorney's fee to be fixed by the court.

Death, illness, disability or disqualification of the Principal shall not relieve Surety of its obligations hereunder.

\_\_\_\_\_  
Principal\_\_\_\_\_  
Surety\_\_\_\_\_  
By\_\_\_\_\_  
Attorney-in-Act\_\_\_\_\_  
Date\_\_\_\_\_  
Address

NOTE: Signature of those executing for Surety must be properly acknowledged.

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

### AGENDA ITEM: 16

**Date:** December 3, 2008

**Subject:** Contract No. C09085 to provide Construction Zone Enforcement (COZEEP) services for Freeway Construction Projects

**Recommendation:\*** Approve Contract No. C09085 for COZEEP services with the California Highway Patrol (CHP) for the Major Freeway Projects being managed by SANBAG in the amount not to exceed \$1,000,000 with an agreement term to June 30, 2010.

**Background:** This is a new cooperative agreement. In December 2007 the Board approved Contract No C08120 with the CHP to provide COZEEP services for different SANBAG projects. This existing COZEEP contract, originated by CHP, expires on December 31, 2008 and a new COZEEP contract is required for continued construction work planned for the 2009 calendar year and the first six months of 2010 calendar year.

The planned construction work from January 1, 2009 to June 30, 2010 includes the construction of the I-215 Widening and the SR-210/I-215 Connectors in the City of San Bernardino, the Riverside Interchange at I-10 in the City of Rialto, Retrofit of Muscoy underpass at SR-210 in the City of San Bernardino and Rialto, construction of the Live Oak Canyon Road interchange at I-10 in the City of Yucaipa and other project locations as may be requested by SANBAG.

\*

*Approved*  
*Board of Directors*

*Date: December 3, 2008*

*Moved: Second:*

*In Favor: Opposed: Abstained:*

*Witnessed: \_\_\_\_\_*

The COZEEP program enables SANBAG to hire CHP officers and vehicles in order to patrol project construction zones. COZEEP is used to increase traffic enforcement above normal levels in situations where traffic problems are anticipated and to reduce the potential for traffic accidents within a construction zone. CHP presence can also reduce traffic speeds and enhance moving vehicle compliance to modified speed limits in construction zones. CHP Officers are also used to slow down, assist in stopping, and/ or directing traffic enabling necessary breaks in traffic for critical movements of Contractor's equipment and operations. The costs associated in providing these services, including the hourly rate of a CHP officer is set by statute and vehicle mileage.

***Financial Impact:*** This action is consistent with the 2008/09 Budget. The revenue source is Measure I Valley Major Projects.

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. SANBAG Counsel has reviewed and approved this amendment as to form. (*Meeting Chaired by John Pomierski*)

***Responsible Staff:*** Garry Cohoe, Director of Freeway Construction

SANBAG Contract No. C09085  
by and between the  
San Bernardino County Transportation Authority  
and  
Department of California Highway Patrol  
for

Construction Zone Enhanced Enforcement Program

FOR ACCOUNTING PURPOSES ONLY

<input checked="" type="checkbox"/> Payable <input type="checkbox"/> Receivable	Vendor Contract # <u>8R860001</u> Vendor ID <u>CHP1</u>	Retention: <input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Original <input type="checkbox"/> Amendment
--	--	---	--

Notes:

Original Contract:      \$ <u>1,000,000</u>	Previous Amendments Total:      \$ <u>0.00</u>
	Previous Amendments Contingency Total:      \$ <u>0.00</u>
Contingency Amount:      \$ <u>0.00</u>	Current Amendment:      \$ <u>0.00</u>
	Current Amendment Contingency:      \$ <u>0.00</u>

Contingency Amount requires specific authorization by Task Manager prior to release.

Contract TOTAL →	\$ <u>1,000,000.00</u>
------------------	------------------------

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
<u>84309000</u>	<u>5553</u>	<u>Measure I</u>	<u>i300</u>	<u>\$ 220,000</u>
<u>84109000</u>	<u>5553</u>	<u>Measure I</u>	<u>i300</u>	<u>\$ 50,000</u>
<u>82409000</u>	<u>5553</u>	<u>Measure I</u>	<u>i300</u>	<u>\$ 30,000</u>
<u>83810000</u>	<u>5553</u>	<u>Measure I</u>	<u>i300</u>	<u>\$ 150,000</u>
<u>84110000</u>	<u>5553</u>	<u>Measure I</u>	<u>i300</u>	<u>\$ 400,000</u>
<u>82410000</u>	<u>5553</u>	<u>Measure I</u>	<u>i300</u>	<u>\$ 150,000</u>

Original Board Approved Contract Date: <u>12/03/08</u>	Contract Start: <u>01/01/09</u>	Contract End: <u>06/30/10</u>
New Amend. Approval (Board) Date: <u>.....</u>	Amend. Start: <u>... ..</u>	Amend. End: <u>.....</u>

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: <u>08/09</u> \$ <u>300,000</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ <u>700,000</u>
-----------------------------	--	--	-------------------

Is this consistent with the adopted budget?    ☒ Yes    ☐ No  
 If yes, which Task includes budget authority? 843, 841 and 824  
 If no, has the budget amendment been submitted? ☐ Yes ☐ No

CONTRACT MANAGEMENT

Please mark an "X" next to all that apply:

☒ Intergovernmental    ☐ Private    ☐ Non-Local    ☐ Local    ☐ Partly Local

Disadvantaged Business Enterprise: ☒ No    ☐ Yes \_\_\_\_\_ %

Task Manager: Garry Cohoe

Contract Manager: C. Andrea Nieto

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

**STATE OF CALIFORNIA  
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL  
LETTER OF AGREEMENT**

**THIS AGREEMENT**, made and entered into this 3rd day of December, 2008, by and between the State of California, hereinafter called the STATE, acting by and through the Department of California Highway Patrol, hereinafter called the CHP, and the San Bernardino Associated Governments, hereinafter called SANBAG.

**WITNESSETH:** By and in consideration of the covenants and conditions herein contained, SANBAG and the CHP do hereby agree to the following terms and conditions:

1. The purpose of this letter of agreement is to provide supplemental CHP officers to assist SANBAG in the management of public traffic at state highway construction projects. SANBAG has sole discretion in the determination as to whether this service will be requested, per the CALTRANS Construction Manual Chapter 2, Section 215.
2. CHP agrees to provide traffic control services for the construction of the I-215 Widening and the SR-210/I-215 Connectors in the City of San Bernardino, the Riverside Interchange at I-10 in the City of Rialto, Retrofit of Muscoy underpass at SR-210 in the City of San Bernardino and Rialto, construction of the Live Oak Canyon Road interchange at I-10 in the City of Yucaipa and other project locations as may be requested by SANBAG. The number of CHP officers and sergeants for each traffic control service will be determined by each service by SANBAG and the CHP.
3. The CHP San Bernardino Area office will provide uniformed personnel and enforcement vehicles to perform the traffic control.
4. The hours of duty performed by CHP uniformed personnel are those mutually agreed upon by the CHP Contract Coordinator and SANBAG. Any changes to the proposed plan such as additional units, hours, dates, and sites for traffic control can be requested on as needed basis. All changes must be mutually agreed by the parties hereto.
5. CHP officers will normally be used. Sergeants may be used when officers are not available, when requested services warrant the use of a sergeant(s) for the supervision of officers (provided the SANBAG Resident Engineer is notified ahead of time), or when the CHP's operational needs make it impractical to use officers, e.g. sick employees, job action, unexpected decrease in available staffing.
6. Two officers are normally assigned to patrol units between 20:00 and 06:00 hours for officer safety. This does not preclude the assignment of one-officer field patrol units for COZEED details during these hours, provided that there are at least two fixed-post traffic control assignments in close proximity, the beat environment afford reasonable safety, and the CHP Commander has given authorization. The CHP Commander will make this decision on a project-specific basis, and will decide in the interest of the officer safety.



7. The term of this Agreement shall be January 1, 2009, through June 30, 2010.

8. The Contract Coordinators for this Agreement shall be:

Department of California Highway Patrol  
CHP San Bernardino Area  
Officer Jim Smith  
2211 Western Avenue  
San Bernardino, CA 92411-1243  
Telephone Number: (909) 383-4247

San Bernardino Associated Governments  
C. Andrea Nieto  
2700 Little Mountain Drive, Building B,  
Suite 101  
San Bernardino, CA 92405  
(909) 875-6029 x 202

9. The law enforcement services to be performed by CHP uniformed personnel including the standards of performance, discipline and control thereof, shall be the responsibility of CHP.

10. In the event of an unforeseen emergency, this Agreement may be terminated by CHP without prior notice.

11. This Agreement may be amended by written mutual consent of the parties hereto.

12. In consideration for the above services an upon receipt of an itemized invoice, SANBAG agrees to reimburse CHP for the actual cost incurred at the time services are provided.

It is understood by both parties that rate increases in salary and benefits are governed by collective bargaining agreements and the overhead rate is approved by the State. Written notification of increases in salaries, benefits or the overhead rate will be provided to SANBAG as soon as said increase information is available for dissemination by CHP.

The following CHP officer overtime rates and vehicle mileage is for estimate purposes only, effective Fiscal Year 07/08, until superseded:

CHP Officer	\$83.72 Overtime per hour
CHP Officer M/C	\$86.61 Overtime per hour
CHP Sergeant	\$101.69 Overtime per hour
CHP Sergeant M/C	\$105.21 Overtime per hour
CHP Automobile	\$00.74 per mile
CHP Motorcycle	\$00.78 per mile

13. The total amount of this Agreement shall not exceed \$1,000,000.00.

14. The CHP shall provide SANBAG with an itemized invoice, detailing CHP's entire costs for the traffic control services performed under this Agreement. SANBAG agrees to pay CHP within thirty (30) days after the date of the invoice.

15. Unforeseen events may require CHP personnel to expend hours in excess of the original estimate.

16. The billing of CHP uniformed personnel's time will be from portal to portal (CHP Area to service location and back to the CHP Area).
17. If the CHP uniformed personnel has reported to the assigned location and has worked less than four (4) hours, SANBAG agrees to pay every assigned CHP uniformed personnel a minimum of four (4) hours overtime. Exception: This does not apply to those cases when the hours worked is part of an extended shift.
18. If the CHP uniformed personnel reports to the assigned service location and if for any reason CHP reassigns the uniformed personnel away from the service location, SANBAG will be billed only for the uniformed personnel's actual time incurred from the CHP Area office to the service location and for the time spent at the assigned service location.
19. Any dispute concerning a question of fact arising under the terms of this agreement which is not resolved within a reasonable period of time by, SANBAG and CHP employees normally responsible for the administration of this contract, shall be brought to the attention of the, SANBAG designated representative and the CHP Administrative Services Officer (or designated representative) for joint resolution. At the request of either party, a forum for discussion of the disputed item(s) will be held, at which time the, SANBAG designated representatives and the CHP Administrative Services Officer (or designated representatives) shall be available to assist in the resolution by providing advice to both parties as to SANBAG and the CHP's policies and procedures. If an agreement cannot be reached through the application of high-level management attention, either party may assert its other rights and remedies within this agreement or within a court of competent jurisdiction.
20. SANBAG and the CHP shall maintain all books, documents, papers, accounting records, and other evidence pertaining to performance of this contract, but not limited to, the costs of administering the contract, for a period of three (3) years after final payment under this contract. The State Auditor, or any duly authorized representative of the State shall have access to any books, records, and documents of either party that are pertinent to the contract for audits, examinations, excerpts and transactions, and copies thereof shall be furnished if requested. (Government Code Section 8546).

## 21. CANCELLATION

- a. SANBAG will not be charged for cancellations made more than 24 hours prior to the scheduled assignment.
- b. If cancellation is made within 24 hours prior to the scheduled assignment and the assigned CHP uniformed personnel **cannot be notified** of such cancellation, a minimum of four (4) hours overtime will be charged for each assigned uniformed personnel.
- c. If cancellation is made within 24 hours prior to the scheduled assignment and the CHP uniformed personnel is notified of such cancellation, SANBAG will only be charged a short notice cancellation fee of \$50.00 per assigned CHP uniformed personnel.

- d. All cancellation notices to CHP must be made during normal CHP business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays.
  - e. CHP agrees to make reasonable efforts to notify the assigned CHP uniformed personnel of the cancellation.
  - f. This Agreement may be canceled by either party upon thirty (30) days prior written notification
22. Additional charges may be assessed for CHP supplies, additional equipment utilized, damage to property repaired or replaced at state expense, which are directly related to the services provided herein.
23. Gifts, donation, or gratuities may not be accepted by CHP employees in their own behalf or in behalf of the Department, informal squad club, or other local funds.
24. Neither STATE nor any officer or employee is responsible for any damage or liability occurring by reason of anything done or omitted to be done by SANBAG under or in connection with any work, authority or jurisdiction delegated to SANBAG under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, SANBAG shall fully defend, indemnify and save harmless the State of California, all officers and employees from all claims, suits or actions of every name, kind and description brought for or in account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by SANBAG under or in connection with any work, authority or jurisdiction delegated to SANBAG under this Agreement.
25. Neither SANBAG nor any officer or employee is responsible for any damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, STATE shall fully defend, indemnify and save harmless SANBAG, all officers and employees from all claims, suits or actions of every name, kind and description brought for or in account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction delegated to STATE under this Agreement.

26. SANBAG agrees to provide CHP with a resolution, motion, order or ordinance of the governing body which bylaw authorized execution of this Agreement, and indicates the individual who is authorized to sign the Agreement on behalf of SANBAG.

STATE OF CALIFORNIA  
Department of California Highway Patrol

SAN BERNARDINO ASSOCIATED  
GOVERNMENTS

\_\_\_\_\_  
L. A. PAOLINI

\_\_\_\_\_  
Gary C Ovitt, President  
SANBAG Board of Directors

\_\_\_\_\_  
Date

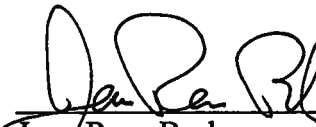
\_\_\_\_\_  
Date

Department of California Highway Patrol  
Business Services Section  
Contract Services Unit  
P.O. Box 942898  
Sacramento, CA 94298-0001  
(916) 375-2965

San Bernardino Associated Governments  
2700 Little Mountain Drive,  
1170 W 3rd Street, 2nd Floor  
San Bernardino, CA 92410  
(909) 889-8611

Approved as to form:

By:

  
\_\_\_\_\_  
Jean-Rene Basle,  
SANBAG Counsel

Date:

\_\_\_\_\_  
11/17/05

## *Minute Action*

AGENDA ITEM: 17

**Date:** December 3, 2008

**Subject:** Final Accounting for SR-210 Right-of-Way Costs

**Recommendation:\***

1. Receive report on SR-210 final right-of-way capital expenditures totaling \$122,806,500
2. Acknowledge \$26,679,500 in expenditures over the programmed State Transportation Improvement Program (STIP) amount which will count against San Bernardino County's (STIP) share.

**Background:** The right-of-way for the SR-210 Freeway was funded by State Transportation Improvement Program (STIP) funds, as recommended by the SANBAG Board of Directors. The SR-210 was designated as a corridor project. A corridor project allows flexibility in utilizing the funds on all the segments on the corridor. The right-of-way funds for the SR-210/I-10 Direct Connector project were segregated from the corridor to be in compliance with the Corridor Mobility Improvement Account guidelines.

The STIP Guidelines require that for corridor projects, the final project expenditures, actual plus estimated, are deferred until the time the California Transportation Commission (CTC) makes an allocation for the last construction segment. With the completion of the last segment of SR-210, the final project expenditures have been finalized.

The actual final right-of-way capital expenditures are \$211,742,262, \$115,615,262 above the \$96,127,000 programmed by SANBAG. Per the STIP Guidelines, the project is responsible for all costs; costs over the programmed

*Approved*  
*Board of Directors*

*Date:* December 3, 2008

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

amount are to be counted against the county's future share of STIP funding. CTC and Caltrans staff, understanding what an impact this late development would have on SANBAG's program, have worked with SANBAG to develop a plan that will reduce the impacts.

Normally, the excess land sales are credited to the statewide STIP fund. However, CTC and Caltrans staff have agreed to credit the excess land sales to reduce the deficit. The SR-210 excess land credit is \$58,993,155, reducing the deficit to \$56,622,107.

The final right-of-way capital expenditures include both actual and estimated expenditures. The items that are estimated in the expenditures are condemnation cases and inverse condemnations. The SR-210 has three outstanding inverse condemnation cases which consist of the Colonies, Cactus Basin, and Williamson claims against Caltrans and SANBAG. It has been agreed that the final accounting will not include any funds for these inverse condemnation cases. In other words, any settlement against Caltrans will not count against SANBAG's STIP share. Crediting the total condemnation and inverse condemnation expenditures of \$29,942,607, leaves an outstanding deficit of \$26,679,500. The SR-210 final right-of-way capital expenditures are shown by Attachment 'A'.

SANBAG and Caltrans staffs have been working on final accounting for SR-210 right-of-way since December 2007. The numerous project phases which have been split and combined over the development of this corridor lead to accounting issues and a changing right-of-way capital balance until the final expenditures were tabulated. If there had been an on-going, clear understanding of the balance, SANBAG would have been responsible to fund the total shortfall in prior STIPs. The actions recommended in this item, with concurrence of Caltrans and the CTC, will represent a final accounting for close-out of SR-210 right-of-way costs, leaving SANBAG with a final responsibility for \$26,679,500 and the ability to account for the amounts owed over the next three STIP cycles.

The proposed recommendation is subject to CTC Board approval.

**Financial Impact:** This action will reduce the future STIP allocations to San Bernardino County by \$26,679,500.

**Reviewed By:** This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. (*Meeting Chaired by John Pomierski*)

**Responsible Staff:** Garry Cohoe, Director of Freeway Construction

**DRAFT Analysis of Expenditures and Excess Land Sales**  
**For SBD 210**  
**As of 10/28/2008**

ATTACHMENT A

Type of Expenditures and Encumbrances	Object Code	Actual Expenditures Encumbrances	Future Needs	Final R/W Estimate
Title and Escrow Fees	034	578,450		578,450
Acquisition of Real Property + (AOs 052, 053, 059, 080)	050	118,501,516		118,501,516
Right of Way Utility Relocation	054	47,359,587		47,359,587
Relocation Assistance Payments	055	3,987,982		3,987,982
Demolition and Clearance	056	3,828,575		3,828,575
Project Development Permit Fees	088	16,727		16,727
Condemnation Deposits	090	875,685	2,000,000	2,875,685
Jury, Recording, Reporter Fees - Condemnation	130	1,447,812		1,447,812
Expert Appraisers and Witnesses - Condemnation	131	3,203,317		3,203,317
Jury, Recording, Reporter Fees - Inverse	230	795,583		795,583
Expert Appraisers and Witnesses - Inverse + (AO 170)	231	22,291,183	6,855,841	29,147,024
<b>Total Estimated Expenditures and Encumbrances</b>		202,886,417	8,855,841	211,742,258
Less: Inverse Condemnation and Related Costs		(23,086,766)	(6,855,841)	(29,942,607)
Less: Excess Land Sales or Estimated Sales		(45,885,655)	(13,107,500)	(58,993,155)
Note: Estimates were provided by District 08 and HQ's staff				
<b>Final Right of Way Capital Estimate</b>		<b>\$ 133,913,996</b>	<b>\$ (11,107,500)</b>	<b>\$ 122,806,496</b>

- San Bernardino County Transportation Commission •San Bernardino County Transportation Authority  
•San Bernardino County Congestion Management Agency •Service Authority for Freeway Emergencies

### *Minute Action*

AGENDA ITEM: 18

**Date:** December 3, 2008

**Subject:** Cooperative Agreement No. 06-036 Amendment No. 3 with the City of Yucaipa for the construction of the Live Oak Canyon Road/Interstate 10 Freeway Interchange.

**Recommendation: \*** 1. Approve Amendment No. 3 to Cooperative Agreement No. 06-036 with the City of Yucaipa for the Live Oak Canyon/Interstate 10 Freeway Interchange Project to increase the City of Yucaipa's construction funding contribution by \$1,729,043 and include SANBAG construction funding in the amount of \$300,000.

2. Extend the completion date for Cooperative Agreement No. 06-036 to December 31, 2009.

**Background:** This is an Amendment to an existing Cooperative Agreement. This Amendment will align the dollar amounts in the Cooperative Agreement with the total construction costs for the Live Oak Canyon/Interstate 10 Freeway Interchange.

As part of the Traffic Congestion Relief Program (TCRP) established by Assembly Bill 2928, SANBAG was the designated recipient of \$11 million for the Live Oak Canyon/Interstate 10 Freeway interchange and the 14<sup>th</sup> Street Bridge in the City of Yucaipa. Cooperative Agreement No. 06-036 was approved by SANBAG Board of Directors in December 2005 which defined the

*Approved  
Board of Directors*

*Date: December 3, 2008*

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_



responsibilities of SANBAG and the City of Yucaipa in facilitating the project design and right-of-way activities.

The original agreement included \$183,618 for the design activities and amendment No. 1 to the Cooperative Agreement increased the estimated cost for engineering by \$170,905. Amendment No. 2 added the City's share of the construction and construction management services cost to the Agreement, which was estimated to be \$5,371,000.

This proposed Amendment No. 3 increases the City's estimated share of construction, construction management services, and design support of construction by \$1,729,043 for a total of \$7,454,566.

A separate Project Advancement Agreement (C07047) approved by the Board in August 2006, requires SANBAG to reimburse the City of Yucaipa up to \$6,286,672. The reimbursement will be with Measure 2010-2040 Funds per the Advancement Agreement. A separate landscape construction agreement between the City and SANBAG maybe bought forward. Staff is currently discussing the roles and responsibilities of both parties and the funding of the landscape improvements.

Before the TCRP funding was reinstated in 2005, the Board in February of 2003 authorized the use of Measure I funds to design and install signals at the Live Oak/I-10 ramps to relieve serious safety concerns because of the "Stop Sign" controlled interchange. The amount of \$300,000 for the project was incorporated into FY 04/05 budget and was passed by the Board in June of 2005. As the TCRP funds were reinstated and work progressed in the design of the interchange reconstruction it became apparent that the installation of the signals would not be prudent. A decision was made not to construct the signals and to contribute the \$300,000 to the interchange project. That decision is now being formalized by including the \$300,000 in this amendment.

The completion date for this Cooperative Agreement was established in July of 2006 when the Board last amendment this agreement. This was a year before the construction contract was awarded when the start and completion dates were estimated. The current completion date for the construction of the Live Oak / I-10 interchange is April of 2009 and with project close procedures and claims settlement (if any) staff are recommending a Cooperative Agreement completion date of December 31, 2009.

**Financial Impact:** This Item is consistent with the 2008/09 Budget. The project is being funded by TCRP and the City of Yucaipa.

Board Agenda Item  
December 3, 2008  
Page 3

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Major Projects Committee on September 11, 2008. SANBAG Counsel has reviewed and approved this amendment as to form. *(Meeting chaired by Mayor John Pomierski)*

***Responsible Staff:*** Garry Cohoe, Director of Freeway Construction

SANBAG Contract No. 06-036-03  
by and between the  
San Bernardino County Transportation Authority  
and  
the City of Yucaipa  
for  
Live Oak Canyon/Interstate 10 Freeway Interchange Projects

FOR ACCOUNTING PURPOSES ONLY				
<input type="checkbox"/> Payable <input checked="" type="checkbox"/> Receivable	Vendor Contract # _____ Vendor ID _____	Retention: <input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Original <input checked="" type="checkbox"/> Amendment	
Notes:				
Original Contract:      \$ 183,618.00  Contingency Amount:    \$ <u>0.00</u>		Previous Amendments Total:      \$ 5,541,905 Previous Amendments Contingency Total:    \$ 0 Current Amendment:                  \$ 1,729,043 Current Amendment Contingency:            \$ 0		
Contingency Amount requires specific authorization by Task Manager prior to release.				\$ 7,454,566
Contract TOTAL →				
↓ Please include funding allocation for the original contract or the amendment.				
<u>Task</u>	<u>Cost Code</u>	<u>Funding Sources</u>	<u>Grant ID</u>	<u>Amounts</u>
84309000	5553	City of Yucaipa	0636C	\$0
Original Board Approved Contract Date: <u>11/02/05</u> Contract Start: <u>11/02/05</u> Contract End: <u>12/31/06</u> New Amend. Approval (Board) Date:                      Amend. Start:                      Amend. End: <u>12/31/09</u>				
If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:				
Approved Budget Authority →	Fiscal Year: <u>08/09</u> \$ 0	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ 0	
Is this consistent with the adopted budget? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, which Task includes budget authority? <u>84309000</u> If no, has the budget amendment been submitted? <input type="checkbox"/> Yes <input type="checkbox"/> No				
CONTRACT MANAGEMENT				
Please mark an "X" next to all that apply:				
<input checked="" type="checkbox"/> Intergovernmental <input type="checkbox"/> Private <input type="checkbox"/> Non-Local <input type="checkbox"/> Local <input type="checkbox"/> Partly Local				
Disadvantaged Business Enterprise: <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes _____ %				
Task Manager: Garry Cohoe			Contract Manager: Chuck Wisdom	
 Task Manager Signature			 Contract Manager Signature	
 Chief Financial Officer Signature			Date	

**COOPERATIVE AGREEMENT NO. 06-036**

**AMENDMENT NO. 3**

**BETWEEN**

**SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**

**AND**

**THE CITY OF YUCAIPA**

**FOR**

**LIVE OAK/I-10 INTERCHANGE RECONSTRUCTION FUNDING**

This Cooperative Agreement No. 06-036 Amendment No. 3 is made and entered into this Third day of December, 2008 by and between the San Bernardino County Transportation Commission (hereinafter referred to as "SANBAG") and the City of Yucaipa (hereinafter referred to as the "CITY"). This Amendment defines specific SANBAG and CITY responsibilities for the construction of the Live Oak/I-10 Interchange Reconstruction Construction (hereinafter referred to as the "PROJECT").

**· WITNESSETH**

WHEREAS, the PROJECT will improve traffic operations in and around the Live Oak/I-10 interchange, and

WHEREAS, the construction finding for the PROJECT is being provided by the Transportation Congestion Relief Program (TCRP) and the City of Yucaipa, and

WHEREAS, due to the suspension of TCRP/Proposition 42 funds in past years, the PROJECT had been delayed, and

WHEREAS, the CITY has agreed to provide funding to complete the construction phase of the PROJECT,

NOW, THEREFORE, SANBAG and the CITY agree to the following amendment to Agreement No. 06-036:

1. Increase the City's share for construction and construction management costs for the PROJECT by \$1,729,043 for a total of \$7,454,566 and includes SANBAG funding for construction in the amount of \$300,000.
2. Extend this cooperative agreement completion date to December 31, 2009.
3. All other terms and conditions of SANBAG Contract No. 06-036 and associated amendments shall remain in full force and effect.

**San Bernardino County  
Transportation Commission**

**City of Yucaipa**


By: \_\_\_\_\_  
Gary C. Ovitt  
President, SANBAG Board of  
Directors

By:  \_\_\_\_\_

Date: \_\_\_\_\_

Date: 10-14-08

APPROVED AS TO FORM AND  
PROCEDURE:

By:  \_\_\_\_\_  
Jean-Rene Basle  
SANBAG County Counsel

Date: 10/31/08

## *Minute Action*

### AGENDA ITEM: 19

**Date:** December 3, 2008

**Subject:** Freeway Corridors Toll Feasibility Study

- Recommendation:**\*
1. Approve Amendment No. 2 to the following purchase orders to extend the toll feasibility study on I-15 to the Future High Desert Corridor.
    - a. Purchase Order No. P08208-02 with PB Consult Inc. in the amount of \$280,313.
    - b. Purchase Order No. P08209-02 with KPMG Corporate Finance LLC in the amount of \$84,000.
    - c. Purchase Order No. P08209-20 with Nossaman, Guthner, Knox & Elliott LLP in the amount of 30,000.
  2. Approve a loan from the Measure 1990-2010 Valley Freeway Program of \$1,931,389 to:
    - a. the Measure I 2010-2040 Victor Valley Major/Local Highways Program in the amount of \$240,866;
    - b. the Measure I 2010-2040 Cajon Program in the amount of \$233,261; and
    - c. the Measure I 2010-2040 Valley Freeway Program in the amount of \$1,457,262.
  3. Approve a budget amendment to the FY 2008/09 budget for an additional \$535,299 in TN 85009000. **Garry Cohoe**

**Background:** In June 2008, SANBAG entered into an agreement with RCTC to utilize the consultant team who performed toll feasibility studies in Riverside County for

*Approved*  
*Board of Directors*

*Date:* December 3, 2008

*Moved:* *Second:*

*In Favor:* *Opposed:* *Abstained:*

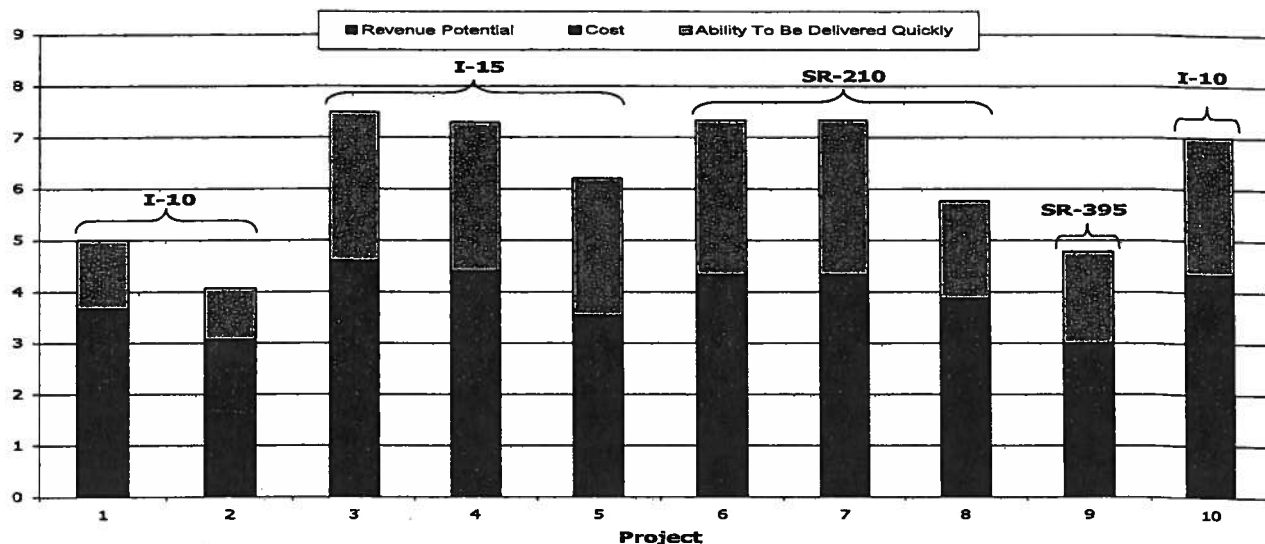
*Witnessed:* \_\_\_\_\_

RCTC to provide services related to innovative financing approaches for highway development in San Bernardino County. The consultant team consisting of Parson Brinckerhoff, KPMG LLC, and Nossaman LLP, has completed the first phase of work. The first phase is the preliminary screening and ranking of potential toll corridors. Ten segments on four corridors were identified as potentially feasible, either by the addition of High Occupancy Toll (HOT) lanes or by construction of a toll road. The four corridors are the I-10 from LA County Line to Riverside County Line, I-15 from Riverside County Line to Bear Valley Road, SR-210 from LA County Line to I-10 in Redlands, and SR-395 from I-15 to north of Adelanto.

Screening criteria were developed and by utilizing quantitative and qualitative analysis, the screening criteria matrix was completed and the segments ranked. The screening criteria are organized into three primary categories: The project's revenue potential, project upfront and ongoing cost, and the project's ability to be delivered quickly. Sub-criteria were created and scored on a scale of one to three with three representing the highest potential for feasibility and one representing the lowest potential for feasibility.

The preliminary screening assessment summary is shown below. A total score for each project and relative rank are achieved by adding scores for each primary category. The addition of HOT lanes to I-15 and SR-210, and the conversion of HOV lanes to HOT lanes on I-10 earned the highest scores in the screening.

Summary of Project Scores		Project									
Highest Possible Total Score = 9											
(Criteria)		1 = I-10 from LA County Line to Riverside County Line	2 = I-15 from Riverside County Line to Bear Valley Road	3 = SR-210 from LA County Line to I-10 in Redlands	4 = I-15 from Riverside County Line to Bear Valley Road	5 = SR-395 from I-15 to north of Adelanto	6 = SR-118 from I-15 to I-210	7 = SR-140 from I-15 to I-210	8 = SR-140 from I-15 to I-210	9 = SR-140 from I-15 to I-210	10 = SR-140 from I-15 to I-210
Revenue Potential		2.2	1.6	2.4	2.2	1.8	1.8	1.8	2.0	2.0	1.8
Cost		1.5	1.5	2.2	2.2	1.7	2.5	2.5	1.9	1.0	2.5
Ability To Be Delivered Quickly		1.3	1.0	2.9	2.9	2.7	3.0	3.0	1.9	1.8	2.7
Total		5.0	4.1	7.5	7.3	6.2	7.3	7.3	5.8	4.8	7.0
Project Rank		8	10	1	4	6	2	2	7	9	5



Based on the preliminary screening and input from Caltrans and SANBAG staff, it is recommended that a more detailed toll feasibility be conducted on three corridors. The three corridors are the I-10 from LA County Line to Riverside County Line, I-15 from Riverside County Line to the future High Desert Corridor, and the SR-210 from LA County Line to I-215. At the November 5, 2008 SANBAG Board meeting amendments to the consultant Purchase Orders were approved to complete the toll feasibility study for the I-10 corridor, the SR-210 corridor, and the I-15 corridor from the Riverside County line to the SR-395. The segment from SR-395 to the future High Desert Corridor was not included in the recommendation approved by the Board since it had been considered at the Mountain/Desert Committee. A description of the three corridors approved for further study is as follows.

#### **I-10 - LA County Line to Riverside County Line**

Despite the modest scores achieved by two of the I-10 projects, providing HOT lanes on these segments represents a strong opportunity to provide traffic management in the corridor. Additionally, as planning for additional HOV lanes on I-10, it is an opportune time to study whether it would make sense to provide HOT lanes on I-10. Therefore, it is recommended that a toll feasibility study be conducted for conversion of one HOV lane to a HOT lane in each direction from the Los Angeles County Line to I-15 and the construction of multiple HOT lanes in each direction from I-15 to the Riverside County Line.

#### **I-15 – Riverside County Line to the SR-395**



The extension of two lanes in each direction is a logical extension to RCTC planned I-15 HOT lanes. Additionally, HOT lanes will provide an opportunity to provide traffic management on this corridor. The segments north of SR-210 have a high directional traffic split, leading to the use of reversible lanes. Toll revenue may fund a portion of a corridor improvements included in the Measure, and provide improvements that are beyond what the Measure anticipated. Additionally, as planning for additional lanes on I-15, it is an opportune time to study whether it would make sense to provide HOT lanes on I-15.

Therefore, it is recommended that a toll feasibility study be conducted for the addition of two HOT lanes in each direction from the Riverside County Line to SR-210, two reversible lanes from SR-210 to I-215, three reversible lanes from I-215 to SR-138, and two reversible lanes from SR-138 to the SR-395.

#### **SR-210 - LA County Line to I-215**

The alternative to be studied is to add one HOT lane in each direction and convert the existing HOV lane to a second HOT lane in each direction from the Los Angeles County Line to I-215. Even though this corridor is not in the Measure I 2010-2040 and the immediate need for HOT lanes does not exist, the study will provide SANBAG with guidance on when HOT lanes are likely to be necessary in the future.

The toll feasibility study will include preliminary engineering to determine the constraints and opportunities, and develop a preliminary cost estimate for the capital construction costs, and the operation and maintenance costs of the facility; new traffic forecasts will be prepared using the latest demographic data and utilizing the traffic model's projected volumes, revenues from the HOT lane usage will be estimated. From the cost information and revenue forecasts, financial models will be developed to determine the potential of the HOT lanes. The estimated cost to perform these services is as follows:

- I-10 - LA County Line to Riverside County Line: \$740,329
- I-15 – Riverside County Line to the SR-395: \$655,761
- SR-210 – Los Angeles County Line to I-215: \$422,646
- Total: \$1,818,736

It is recommended that the toll feasibility study for the I-15 be extended to the future High Desert Corridor. The study will be conducted for the addition of two reversible lanes from the SR-395 to the future High Desert Corridor or an alternate configuration based on traffic data and constraints, such as right-of-way.

This is a continuation of the studies that are being conducted as part of the I-15-Riverside County Line to the SR-395 corridor.

Since the I-15 corridor spans the Valley Program, Cajon Pass Program and the Victor Valley Sub-Area Major/Local Highways Program, it is recommended that three Measure I 2010-2040 programs fair share be based on the lane miles of freeway within each program. This formula was included in the background of the Board item approved in November on this subject. The funding shares for the three programs are: Valley Freeway program 38%; Cajon Program 30%; Victor Valley Subarea Major/Local Highways Program 31%. The estimated total cost to complete the study of the I-15 corridor from Riverside County Line to the High Desert Corridor is \$768,414. This equates into the Victor Valley Major/Local Highways Program share of \$240,866.

When the "Freeway Corridor Feasibility Study" was taken to the November 5, 2008 Board meeting for approval, the agenda item did not include a recommendation seeking approval to fund the studies with Measure 1990-2010 Valley Freeway funds with reimbursement from the Measure I 2010-2040 Victor Valley Major/Local Highways Program in the amount of \$240,866; the Measure I 2010-2040 Cajon Program in the amount of \$233,261; the Measure I 2010-2040 Valley Freeway Program in the amount of \$1,457,262.

In addition, the November Board action included completing a toll feasibility study on SR-210, but the funding to prepare the study was not include in the budget amendment request. Therefore, the budget amendment consists of \$112,653 to extend the I-15 study to the proposed High Desert Corridor, plus funding of \$422,646 to conduct the study on SR-210. The total budget amendment being requested is \$535,299.

***Financial Impact:*** This item is not consistent with the current FY budget and will require a budget amendment for an additional \$535,299 in TN 85009000. The funding source will be Measure 1990-2010 Valley Program, with reimbursement from the Measure I 2010-2040 Valley Freeway Program, Cajon Pass Program, and the Victor Valley Subarea Major/Local Highways Program. The timing of reimbursement will need to be considered by the various committees and approved by the SANBAG Board.

***Reviewed By:*** This item was reviewed by the Mountain Desert Committee on November 21, 2008. The Committee unanimously approved the item for an amount not to exceed \$250,000 for the Victor Valley sub-area, subject to Victor Valley Sub-Area Committee considering the item prior to bringing the item forward to the Board. (*Meeting Chaired by Brad Mitzelfelt.*) The sub-committee meeting is anticipated to occur prior to the December 3, 2008 Board meeting. A similar item was reviewed by the Strategic Plan Ad Hoc Committee on September 30, 2008 and by the Major Projects Committee on October 9, 2008.

***Responsible Staff:*** Garry Cohoe, Director of Freeway Construction

## PURCHASE ORDER REQUEST

**NOTE:** Do not use a purchase order for construction projects, roadwork, purchase or lease of real property, and employment contracts.

Short Description of PO to be included in monthly procurement report.  
(Required) Use up to a maximum of 27 characters to provide a short description.

P2-toll feasibility study

**VENDOR:** PB Consult, Inc.

**Vendor ID** PBC1

**ADDRESS:** 1884 Northwood Road, Nipomo, CA 93444

**PHONE:** 805-343-6729

☐ Process payment from this PO Request – invoice is attached.

**PO End Date (required):** June 30,2010

**PO # (if released for RFP/RFQ):** P08208-02

Item Description	Order Qty	Task #	Cost Code	Amount
Conduct feasibility study on SR-210 from LA County Line to I-215		85009000	5553	\$ 280,313
				\$
				\$
				\$
				\$
				\$
Shipping/Handling				\$
<b>TOTAL</b>				<b>\$ 280,313</b>

Attach any special instructions that are to be noted on the purchase order.

**Please answer the following questions regarding the selection process:**

Was the County Pre-Approved Vendor List used? ☐ No ☐ Yes

Was an informal competitive bid process done? ☐ No ☐ Yes – complete Informal Bid Process Form (Page 2).

Is this a sole source purchase order? ☐ No ☐ Yes - If so, why? \_\_\_\_\_

Requested By:	Date
P.O. Manager's Signature	Date
Approved by Task Manager (Signature)	11/21/08

Filename: POPBC102-GC.docx

## PURCHASE ORDER REQUEST

**NOTE:** Do not use a purchase order for construction projects, roadwork, purchase or lease of real property, and employment contracts.

Short Description of PO to be included in monthly procurement report.  
(Required) Use up to a maximum of 27 characters to provide a short description.

P2-toll feasibility study

VENDOR: KPMG Corporate Finance

Vendor ID KPMG

ADDRESS: 255 S. Grand Avenue, #2000, Los Angeles, CA 90071

PHONE: 213-972-4000

☐ Process payment from this PO Request – invoice is attached.

PO End Date (required): June 30, 2010

PO # (if released for RFP/RFQ): P08209-02

Item Description	Order Qty	Task #	Cost Code	Amount
Conduct feasibility study on SR-210 from LA County Line to I-215		85009000	5553	\$ 84,000
				\$
				\$
				\$
				\$
				\$
Shipping/Handling				\$
TOTAL				\$ 84,000

Attach any special instructions that are to be noted on the purchase order.

Please answer the following questions regarding the selection process:

Was the County Pre-Approved Vendor List used? ☐ No ☐ Yes

Was an informal competitive bid process done? ☐ No ☐ Yes -- complete Informal Bid Process Form (Page 2).

Is this a sole source purchase order? ☐ No ☐ Yes - If so, why? \_\_\_\_\_

Requested By:	Date
P.O. Manager's Signature	Date
Approved by Task Manager (Signature)	11/21/08

Filename: POKPMG02-GC.docx

## PURCHASE ORDER REQUEST

**NOTE:** Do not use a purchase order for construction projects, roadwork, purchase or lease of real property, and employment contracts.

Short Description of PO to be included in monthly procurement report.  
(Required) Use up to a maximum of 27 characters to provide a short description.

P2-toll feasibility study

VENDOR: Nossaman Guthrie Knox and Elliot

Vendor ID NKGE

ADDRESS: 445 S. Figueroa, 31<sup>st</sup> Floor, Los Angeles CA

PHONE:

☐ Process payment from this PO Request – invoice is attached.

PO End Date (required): June 30, 2010

PO # (if released for RFP/RFQ): P08210-02

Item Description	Order Qty	Task #	Cost Code	Amount
Conduct feasibility study on SR-210 from LA County Line to I-215		85009000	5553	\$ 30,000
				\$
				\$
				\$
				\$
				\$
Shipping/Handling				\$
TOTAL				\$ 30,000

Attach any special instructions that are to be noted on the purchase order.

Please answer the following questions regarding the selection process:

Was the County Pre-Approved Vendor List used? ☐ No ☐ Yes

Was an informal competitive bid process done? ☐ No ☐ Yes – complete Informal Bid Process Form (Page 2).

Is this a sole source purchase order? ☐ No ☐ Yes - If so, why? \_\_\_\_\_

Requested By:

Date

P.O. Manager's Signature

Date

Approved by Task Manager (Signature)

Filename: PONKGE02-GC.docx

## *Minute Action*

AGENDA ITEM: 20

**Date:** December 3, 2008

**Subject:** Construction and Maintenance Agreements with Burlington Northern, Santa Fe Railroad (BNSF) and Caltrans for the Interstate 215 Segments 1 and 2 Project

- Recommendation:\***
1. Approve Agreement No. C09109 with BNSF and Caltrans to construct a new bridge over existing BNSF tracks at Ninth Street. TN 83810000.
  2. Approve Agreement No. C09110 with BNSF and Caltrans to construct a new bridge over existing BNSF tracks at Baseline Street. TN 83810000.
  3. Approve Agreement No. C09111 with BNSF and Caltrans to construct a new bridge over existing BNSF tracks at 16th Street. TN 83810000.

**Background:** There are three new overcrossings over the reconstructed I-215 freeway in Segment 2 which SANBAG and Caltrans have designed and SANBAG will be constructing over both the existing freeway and BNSF tracks. This work is shown in Exhibit "A" of each of the three agreements and specified in the "Recitals" at the beginning of the agreements. These agreements specify that SANBAG will construct the new bridges and Caltrans will maintain them after completion of construction. These agreements also specify that all agencies will follow established procedures for work on and adjacent to the railroad as will all contractors

\*

*Approved*  
*Board of Directors*

*Date:* December 3, 2008

*Moved:* *Second:*

*In Favor:* *Opposed:* *Abstained:*

*Witnessed:* \_\_\_\_\_

and subcontractors and personnel from all these agencies/companies. This agreement also establishes coordination and contact information between the three agencies and their contractors, and details the rights and responsibilities of these parties both during and after construction.

Since this work is over existing, in service railroad tracks which are owned and operated by BNSF, flagging operations are required along the BNSF tracks during certain times of construction and personnel need to be available to coordinate railroad operations and construction operations. In addition, BNSF also requires inspectors to be present during certain construction activities above and adjacent to its tracks to insure that no activities could pose a hazard to railroad operations. A cost estimate of \$481,213, \$787,823, and \$787,823 for BNSF to provide these services as needed during construction for the I-215 Ninth Street, Baseline Street and 16<sup>th</sup> Street Overcrossings respectively is given in Exhibit "D" of these agreements. Since SANBAG is the lead agency administering the construction contract, SANBAG, in coordination with BNSF has estimated the number of days it will require flagging and inspection. These agreements also specify the acquisition of temporary construction and permanent easements that will be paid to BNSF for using some of their property during construction and for having a permanent expanded structure over their right of way. The acquisition costs for these easements is included in the right of way agreements and right of way budget and funding of this project previously approved by the Board.

***Financial Impact:*** The total estimated cost of these agreements for BNSF to provide flagging and inspection services is \$2,056,859 for the three bridges. These costs are included in the overall engineer's construction estimate for I-215, Segments 1 and 2 and are anticipated expenditures in FY 2009/2010 as construction will not start until then. The ultimate funding source for these agreements is anticipated to be State Corridor Mobility Improvement Account (CMLA) funding. TN 83810000

***Reviewed By:*** This item was reviewed and unanimously recommended for approval by the Major Projects Committee on November 13, 2008. SANBAG Counsel has reviewed and approved the agreement as to form. (*Meeting Chaired by John Pomierski*)

***Responsible Staff:*** Garry Cohoe, Director of Freeway Construction



## SANBAG Contract No. C09109

by and between

San Bernardino County Transportation Authority

and

California Department of Transportation and BNSF Railroad

for

Construction and Maintenance Agreement for I-215 Segment 2 Ninth Street Overhead

**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input checked="" type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID _____	<input type="checkbox"/> Yes ____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Amendment

**Notes:**

Original Contract:	\$ <u>481,213</u>	Previous Amendments Total:	\$ _____
Contingency Amount:	\$ _____	Previous Amendments Contingency Total:	\$ _____
		Current Amendment:	\$ _____
		Current Amendment Contingency:	\$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL → \$ 481,213.00**

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
83810000	5553	CMIA	TBD	\$ 300,000
83811000	5553	CMIA	TBD	\$ 181,213
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date:	<u>12/3/08</u>	Contract Start:	<u>12/3/08</u>	Contract End:	<u>12/3/13</u>
New Amend. Approval (Board) Date:	_____	Amend. Start:	_____	Amend. End:	_____

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

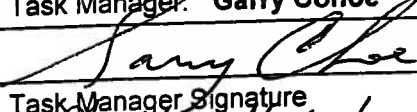
Approved Budget Authority →	Fiscal Year: <u>08/09</u> \$ <u>0</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ <u>481,213</u>
-----------------------------	--	--	-------------------

Is this consistent with the adopted budget? ☒ Yes ☐ No

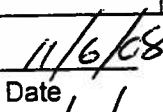
If yes, which Task includes budget authority? \_\_\_\_\_

If no, has the budget amendment been submitted? ☐ Yes ☒ No**CONTRACT MANAGEMENT**

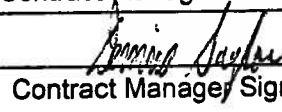
Please mark an "X" next to all that apply:

☒ Intergovernmental    ☒ Private    ☐ Non-Local    ☐ Local    ☐ Partly Local
Disadvantaged Business Enterprise: ☐ No ☐ Yes \_\_\_\_ %Task Manager: **Garry Cohoe**Contract Manager: **Dennis Saylor**


Task Manager Signature



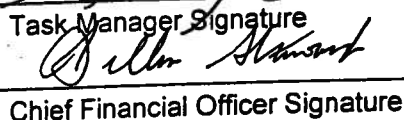
Date



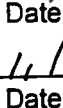
Contract Manager Signature



Date



Chief Financial Officer Signature



Date

## OVERHEAD AGREEMENT

BNSF File No. 026113F  
Ninth Street Overhead  
U.S. D.O.T. No. 26113F

This Agreement ("**Agreement**"), is executed to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the STATE OF CALIFORNIA, acting through the Department of Transportation, hereinafter referred to as ("**STATE**") and the SAN BERNARDINO ASSOCIATED GOVERNMENTS, a body corporate and politic of the State of California, hereinafter referred to as ("**SANBAG**").

### RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of San Bernardino, County of San Bernardino, State of California;

WHEREAS, STATE and The Atchison, Topeka and Santa Fe Railway Company, predecessor in interest to BNSF, hereinafter referred to as ("**Santa Fe**"), entered into an agreement dated February 27, 1958, carried in BNSF's records as Contract No. CL-61878, ("**Original Agreement**") which provided for the construction and maintenance of five (5) grade separation structures comprising of Ninth Street, Baseline Street, 16<sup>th</sup> Street, Massachusetts Avenue, and 27<sup>th</sup> Street Overheads, over and across BNSF's rail corridor hereinafter referred to as ("**Rail Corridor**"), and over its tracks;

WHEREAS, this Agreement covers the demolition and reconstruction of the Ninth Street Overhead only;

WHEREAS, STATE and the San Bernardino Associated Governments hereinafter referred to as "**SANBAG**", propose to reconstruct Interstate Highway I-215, through the City of San Bernardino, in order to accommodate the construction of High Occupancy Vehicle (HOV) lanes involving the demolition and reconstruction of the Ninth Street Overhead by means of a 362.02 foot long 3-span cast in place prestressed concrete box girder on concrete columns and concrete abutments;

WHEREAS, STATE and SANBAG have entered into a Design Cooperative Agreement, dated September 3, 2008 providing for SANBAG's design for the reconstruction of the Segment 2 portion of the Interstate Highway I-215 reconstruction project, which includes the reconstruction of the Ninth Street Overhead.

WHEREAS, STATE and SANBAG will enter into a Construction Cooperative Agreement prior to the start of construction of the Project as described in Article I, Section 1 of this Agreement, that will provide for SANBAG's construction of the **Project** with STATE owning and maintaining the **Structure** as described in Article I, Section 1.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE I – SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the removal of the existing Ninth Street Overhead and the construction of a replacement Ninth Street Overhead, (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

## ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of STATE and SANBAG set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon STATE's payment to BNSF of the sum of Four Thousand Four Hundred and Sixty-eight and No/100 DOLLARS (\$4,468.00), BNSF shall grant to SANBAG, their successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's Rail Corridor described further on Exhibit A, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said rail corridor;
- (b) Construct, operate, maintain, renew and/or relocate upon said rail corridor, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with SANBAG's or STATE's use and maintenance of the Structure;
- (c) Use or operate the Rail Corridor as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with SANBAG's, or STATE's use and maintenance of the Structure.

The Temporary Construction License shall be in the form attached hereto as Exhibit B and by this reference made a part hereof, and shall be for a term beginning on the authorized commencement date as set forth in Article III, Section 10 (c) (ii) and ending on the earlier of (i) completion of the Structure, or (ii) Sixty (60) months following the Effective Date of the Temporary Construction License. The Temporary Construction License and related rights to be given by BNSF to SANBAG shall be without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words therein contained. The Temporary Construction License shall be for the Project and for no other purpose. STATE acknowledges and agrees that STATE shall not have the right, under the

Temporary Construction License, to use the Structure. In the event STATE or SANBAG is evicted by anyone owning, or claiming title to or any interest in said Rail Corridor, BNSF will not be liable to STATE or SANBAG for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to SANBAG pursuant to the Temporary Construction License.

Upon payment to BNSF of the additional sum of Twenty Two Thousand Nine Hundred and Sixty-nine and No/100 DOLLARS (\$22,969.00), such payment to be made within thirty (30) days of the giving of the notice required pursuant to Article III, Section 13 of this Agreement, BNSF shall deliver to STATE, its successors and assigns, a perpetual easement to enter upon and use that portion of BNSF's Rail Corridor described therein as is necessary to use and maintain the Structure. The Easement shall be in the form attached hereto as Exhibit B-1 and by this reference made a part hereof.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of SANBAG, which approval will not be unreasonably withheld. Construction of the Project will include the following principle elements of railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services necessary for the safety of BNSF's property and the operation of its trains during construction of the Project as set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project and;
- (e) Providing a contract project coordinator, at SANBAG's expense, to serve as a project manager for the Project;

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements or by contractor(s) if necessary.

4. SANBAG agrees to reimburse BNSF for work of an emergency nature caused by SANBAG or SANBAG's contractor in connection with the Project which is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of SANBAG and SANBAG agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge SANBAG for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send SANBAG progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Pursuant to the California Prompt Payment Act, CALIFORNIA CODES, GOVERNMENT CODE, SECTION 927-927.12, SANBAG must reimburse BNSF for completed force-account work within forty-five (45) calendar days from the date of SANBAG's receipt of the invoice for such work. Upon completion of the Project, BNSF will send SANBAG a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. If SANBAG fails to make payment of a BNSF invoice within said forty-five (45) days, SANBAG shall pay a penalty at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent pursuant to Section 927.6 (b) of said Government Code.

### **ARTICLE III – SANBAG OBLIGATIONS**

In consideration of the covenants of STATE and BNSF set forth herein and the faithful performance thereof, SANBAG agrees as follows:

1. SANBAG shall furnish to BNSF and STATE plans and specifications for the Project together with calculations with the railroad clearances expressed in **English Units**. One complete reduced size 11" x 17" paper copy shall be submitted to BNSF's Assistant Director of Structural Engineering. A PDF copy of the plans and specifications should be sent to both BNSF'S Manager Public Projects and BNSF'S Assistant Director Structural Engineering. The PDF copy with a file size of two (2) megabytes or less should be sent via an email attachment. Should the PDF copy of the plans and specifications exceed two (2) megabytes, a CD (Compact Disk) of the plans and specifications should be sent via overnight mail service to both BNSF offices. The email and mailing addresses are included in Article V, Section 23. Sets of said plans shall be submitted to BNSF and STATE for approval prior to commencement of any construction. BNSF will give SANBAG final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF'S final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet BNSF standard specifications, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. SANBAG must provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the Project.

3. SANBAG must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

4. SANBAG must construct the Project as shown on the attached Exhibit A and do all work ("SANBAG's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF herein. SANBAG must furnish all labor, materials, tools and equipment for the performance of SANBAG's Work. The principal elements of SANBAG's Work are as follows:

- (a) Preliminary and final Engineering;
- (b) Demolition and removal of the existing Ninth Street Overhead;
- (c) Design and the Construction of the Structure;
- (d) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's Rail Corridor;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Apply the D.O.T. Crossing Number 026113F in a conspicuous location on the Structure.
- (g) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

5. SANBAG's Work must be performed by SANBAG or SANBAG's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

6. SANBAG must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, SANBAG must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

7. SANBAG or its contractor(s) shall submit one reduced size 11" x 17" paper copy, including calculations, expressed in **English Units** of the plans and specifications for proposed shoring, falsework, or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Assistant Director Structural Engineering. SANBAG or its contractor(s) shall submit a PDF copy of the plans and specifications for the proposed shoring, falsework, or cribbing to both BNSF's Manager Public Projects and BNSF's Assistant Director Structural Engineering. The PDF copy with a file size of two (2) megabytes or less should be sent via an email attachment. Should the PDF copy of the plans and specifications exceed two (2) megabytes, a CD (Compact Disk) of the plans and specifications should be sent via overnight mail service to both BNSF offices for approval. The email and mailing addresses are included in Article V, Section 23. The shoring, falsework or cribbing used by SANBAG's contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit F, and BNSF's Instructions FOR PREPARATION OF DEMOLITION PLANS as set forth in Exhibit G with both Exhibits attached to this Agreement and incorporated herein, and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

Falsework shall be designed according to the State of California, Department of Transportation FALSEWORK MANUAL available at this Web Site:  
<http://www.dot.ca.gov/hq/esc/construction/manuals/Falsework/>.

8. SANBAG must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or Rail Corridor. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Project Engineer at telephone number 909 386 4079 and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF Rail Corridor or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for any BNSF Representative to stop construction at no cost to SANBAG or BNSF until these items are completed.
- (c) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's Rail Corridor, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's Rail Corridor, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**
- (d) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

9. SANBAG must incorporate in each prime contract for construction of the Project, or the specifications therefore (i) the provisions set forth in Article III, Sections 5, 6, 7, 8, and 10; (ii) the provisions set forth in Article V, Sections 1, 2, 3, 4, 5, 6, 7, 11 and 12; and (iii) the provisions set forth in Exhibit C, Exhibit C-1, Exhibit F and Exhibit G, with the herein referenced Exhibits attached hereto and by reference made a part hereof.

10. Except as otherwise provided below in this Section 10, all construction work performed hereunder by SANBAG for the Project will be pursuant to a contract or contracts to be let by SANBAG, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's Rail Corridor must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's Rail Corridor until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in SANBAG's best interest, SANBAG may direct that the construction of the Project be done by day labor under the direction and control of SANBAG, or if at any time, in the opinion of SANBAG, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, SANBAG may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, SANBAG will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.
- (e) To facilitate scheduling for the Project, SANBAG shall have its contractor give BNSF's Project Engineer at telephone number 909 386 4079 eight (8) weeks advance notice of the proposed times and dates for work windows. BNSF and SANBAG's contractor will establish mutually agreeable work windows for the Project. SANBAG shall inform its contractor that any request for work windows with less than eight (8) weeks advance notice will have a reduced probability of approval. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.
- (f) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth in Exhibit F and the INSTRUCTIONS FOR PREPARATION OF DEMOLITION PLANS set forth in Exhibit G, with both Exhibits attached to this Agreement and incorporated herein.



11. SANBAG must advise the BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, SANBAG must notify BNSF's Manager of Public Projects, in writing, of the date on which SANBAG, and/or STATE and/or SANBAG's Contractor will meet with BNSF for the purpose of making final inspection of the Project.

12. TO THE FULLEST EXTENT PERMITTED BY LAW, SANBAG HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF SANBAG, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY SANBAG, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF SANBAG, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) SANBAG'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE GRANTED TO SANBAG PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO SANBAG PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) SANBAG'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RAIL CORRIDOR, OR (VII) AN ACT OR OMISSION OF SANBAG OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY SANBAG WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.

13. SANBAG must give BNSF's Manager of Public Projects written notice to proceed ("Notice to Proceed") with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from SANBAG. The Notice to Proceed must reference BNSF's file number 026113F.

#### **ARTICLE IV - STATE OBLIGATIONS**

IN CONSIDERATION of the covenants of BNSF and SANBAG herein contained and the faithful performance thereof, STATE agrees:

1. To permit SANBAG to act as the responsible lead agency to design and construct the Project.
2. STATE must make application to the Public Utilities Commission of the State of California ("Commission") for an order authorizing construction of the Project and to furnish to the Commission plans of the proposed construction, approved by BNSF, together with a copy of this agreement and to obtain all other required permits and approvals for the construction of the Project.
3. STATE will acquire all properties required to construct the Project and maintain the Structure;
4. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and STATE agree to the following terms upon completion of construction of the Project:
  - (a) STATE will own and maintain, at its sole cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement.
  - (b) STATE will arrange for removal of graffiti from the Structure;
  - (c) STATE must maintain D.O.T. Crossing Number 026113F in legible condition in the conspicuous location on the Structure where applied by SANBAG during construction;
  - (d) It is understood by STATE that the right to install utilities is restricted to the placement of underground utilities beneath BNSF's tracks located a minimum of fifty (50) feet from abutments, piers, piles, or footings with the exception that upon BNSF's prior approval BNSF will permit selected utilities to be run through the deck of the Structure. Under no circumstances will utilities be allowed to hang from the Structure. All utility crossings within the limits of BNSF's Rail Corridor will be covered by separate agreements between BNSF and each of the owners of the utilities.
  - (e) Upon request from BNSF, STATE shall remove all trash and debris associated with the Structure from BNSF's property.
  - (f) In conformance with and limited to the applicable effect of California Laws insofar as the indemnity and insurance provisions set forth in any of the preceding sections or any rider, amendment or addendum hereto, State is self-insured. If State performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then STATE, shall provide BNSF defense and indemnification at least equal to the defense, indemnification and insurance provisions contained in Exhibit C-1 in accordance with California Government Code section 14662.5. Nothing herein shall be deemed to insure BNSF against its sole negligence or willful misconduct.

In the event any of the Work to be done on behalf of STATE upon BNSF's Rail Corridor is to be done by a contractor or subcontractor, said contractor or subcontractor shall provide to BNSF the insurance policies, certificates, binders, and/or endorsements in favor of BNSF as contained in said Exhibit C-1 as the same may be revised from time to time.

5. Subject to the restrictions imposed by Article V, Section 11 below, STATE must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's Rail Corridor for maintenance purposes. If the construction work hereunder is contracted, STATE must require its prime contractor(s) to comply with the obligations set forth in Exhibit C, Exhibit C-1 and Exhibit F, as the same may be revised from time to time. STATE will be responsible for its contractor(s) compliance with such obligations.

6. PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 14662.5, STATE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS BNSF FROM, AND TO REPAIR OR PAY FOR, ANY DAMAGE PROXIMATELY CAUSED BY REASON OF THE USES AUTHORIZED BY THE EASEMENT SET FORTH IN EXHIBIT B-1 TO THIS AGREEMENT, AND THE TEMPORARY CONSTRUCTION LICENSE SET FORTH IN EXHIBIT B TO THIS AGREEMENT.

#### ARTICLE V – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.
2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F, the Instructions For Preparation Of Demolition Plans as set forth in Exhibit G, and the detailed plans and specifications approved by BNSF.
3. SANBAG must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF shall have the right to request any SANBAG employee, or STATE employee, who enters BNSF's Rail Corridor and because of their incompetence, neglect of duty, unsafe conduct or misconduct and/or they adversely affected BNSF's operations or facilities, be removed from the Rail Corridor. In the event SANBAG, or STATE elects not to honor such request, BNSF may stop work within its Rail Corridor until the matter has been fully resolved to BNSF's satisfaction. The party whose employee has been asked to leave the Rail Corridor will indemnify BNSF and the other parties against any claims arising from such removal.

5. BNSF: will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Contractor (or any of its subcontractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) STATE fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by STATE, Contractor or its subcontractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

SANBAG Director of Freeway Construction  
1170 W. 3rd Street, 2nd Floor  
San Bernardino, CA 92410  
Fax: (909) 388-2002.

6. SANBAG's or any STATE employee, agents, contractors, representatives and invitees shall wear Personal Protective Equipment ("PPE") when on the BNSF's Rail Corridor during construction of the Project or performing subsequent maintenance after completion of construction. The PPE shall meet applicable OSHA and ANSI specifications. Current BNSF PPE requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com). A partial list of BNSF's PPE requirements include; a) safety glasses: permanently affixed side shields; no yellow lenses, b) hard hats with high visibility orange cover, c) safety shoes: hardened toe, above-the-ankle lace-up with a defined heel and d), high visibility retro-reflective orange vests are required as specified by BNSF's representative in charge of the Project. PPE requirements as defined on the web site, will be amended from time to time, and shall take precedence over the Partial list of requirements outlined in this Section 6 of Article V. Hearing protection, fall protection and respirators will be worn as required by State and Federal regulations.

7. SANBAG must supervise and inspect the operations of all SANBAG contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by SANBAG personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating Rail Corridor). Construction of the Project will not proceed until SANBAG corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in

an expeditious manner, BNSF will immediately notify SANBAG Director of Freeway Construction for appropriate corrective action.

8. The Project funding is contemplated to come from mixed sources including Federal funds. Pursuant FEDERAL-AID POLICY GUIDE, dated December 9, 1991, Transmittal 1 23 CFR 646B which states projects for the reconstruction of existing grade separations are deemed to generally be of no ascertainable net benefit to the railroad and there shall be no required railroad share of the costs, unless the railroad has a specific contractual obligation with the State or its political subdivision to share in the costs. Additionally pursuant to the Commission's Code 1201.5 (d) BNSF is not required to contribute to the cost to reconstruct the Ninth Street Overhead as its reconstruction will not increase its capacity.

9. Pursuant to this section and Article II, Section 6 herein, SANBAG must, out of funds made available to it for the construction of the Project, reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement.

10. All expenses detailed in statements sent to SANBAG pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement and the issuance of Notice to Proceed as more particularly described in Article III, Section 13.

11. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed, that would interfere with operations of the Rail Corridor will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

12. Subject to the restrictions imposed by Article V, Section 11 above, the construction of the Project will not commence until SANBAG gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number 026113F. and must state the time that construction activities will begin.

13. Within 90 days of the conclusion of the Project and final acceptance by BNSF, SANBAG must provide BNSF with a complete electronic set of the bridge plans with the railroad clearances (prepared in English Units). BNSF will also accept a marked up paper copy of the bridge plans labeled "**As Built**". The marked up copy of those plans will reflect any and all deviations from the original plans that occurred during construction. The electronic set of bridge plans will be submitted in Micro Station \*.dgn electronic format (preferred) or AutoCAD \*.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. The "As Built" plans shall show actual measured "as constructed" clearances as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities. The As Built plans must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The As Built plans must also include plan and profile, structural bridge drawings and specifications, and drainage plans.

All improvements and facilities must be shown. It is understood that BNSF prefers to receive the "As Built" plans in an electronic format.

14. BNSF may, at its expense, make future changes or additions to the railroad components of the Structure if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the Structure. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Structure, will be divided between BNSF and STATE in such shares as may be mutually agreed to by the parties hereto. Any alteration or reconstruction of the highway components of the Structure will be covered by a Commission order.

15. STATE may, at STATE's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of BNSF's Rail Corridor to a greater extent than is contemplated by the plans and specifications to be approved by BNSF pursuant to Article III, Section 1 herein, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement. Any alteration or reconstruction of the highway components of the Structure will be covered by a Commission order.

16. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto and the Federal Highway Administration, for a period of three (3) years from the date of the final BNSF invoice under this Agreement.

17. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

18. In the event construction of the Project does not commence within three (3) years of the Effective Date, this Agreement will become null and void.

19. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

20. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

21. Only that portion of the aforesaid Original Agreement between the STATE and Santa Fe that pertains to the Ninth Street Overhead as originally constructed shall terminate on the completion date of the Project as provided for in Article III, Section 11 of this Agreement. The Original Agreement shall remain in full force and effect for the remaining four grade separations, Baseline Street, 16<sup>th</sup>. Street, Massachusetts Avenue, and 27<sup>th</sup> Street until they are terminated by separate agreement. Such termination shall not release any party thereto from any liability or obligation thereunder, resulting from any act, omission or event happening prior to the date of termination or thereafter, in the event the terms of said Original Agreement provide that anything shall or may be done after termination thereof.

22. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein), together with previously acquired and recorded property rights if any, is the full and complete agreement between BNSF, STATE and SANBAG with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

23. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager of Public Projects  
740 E. Carnegie Drive  
San Bernardino, CA. 92408  
Email: [Melvin.Thomas@bnsf.com](mailto:Melvin.Thomas@bnsf.com)

Assistant Director Structural Engineering  
4515 Kansas Avenue  
Kansas City, KS 66106  
Email: [Donald.Lozano@bnsf.com](mailto:Donald.Lozano@bnsf.com)

SANBAG:

San Bernardino Associated Governments  
1170 W. 3rd Street, 2<sup>nd</sup>. Floor  
San Bernardino, CA 92410  
Attn. Director of Freeway Construction  
Fax: 909 388 2002

STATE:

Department of Transportation  
Division of Right of Way – Railroad  
Agreements  
1120 N. Street, MS 37  
Sacramento, CA. 95814

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_  
Printed Name: David L. Freeman  
Title: Vice President Engineering

WITNESS:

\_\_\_\_\_

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

By: \_\_\_\_\_  
Printed Name: Gary C. Ovitt  
Title: President - Board of Directors

APPROVED AS TO FORM:

\_\_\_\_\_  
Jean-Rene Basle  
SANBAG Counsel

**STATE OF CALIFORNIA**, acting by and through its  
Department of Transportation

By: \_\_\_\_\_  
Printed Name: Donald E. Grebe  
Title: Chief, Office of Project Delivery  
Division of Right of Way and Land Surveys

\_\_\_\_\_  
Attorney  
Department of Transportation

\_\_\_\_\_  
Approval Recommended  
Department of Transportation



**EXHIBIT "A"**

**ATTACHED TO A CONTRACT BETWEEN  
BNSF RAILWAY COMPANY**

**DAVID L. FREEMAN**  
**VICE PRES. ENGINEERING**

**VICE PRES. ENGINEERING**

AND  
THE STATE OF CALIFORNIA  
AND

**AND  
SAN BERNARDINO ASSOCIATED GOVERNMENTS**

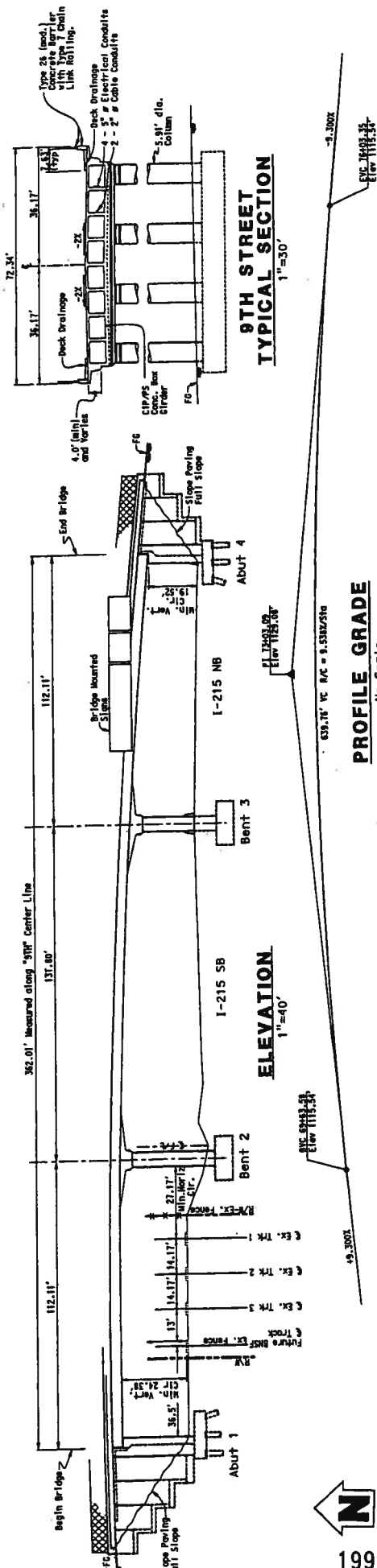
FORT WORTH, TEXAS  
 SCALE: AS NOTED  
 CALIFORNIA DIVISION  
 CAJON SUBDIVISION  
 LINE SEGMENT 7900

**SCALE AS NOTED**

**CALIFORNIA DIVISION**

**CALSON SUBDIVISION**

LINE SEGMENT 7000



# EXHIBIT D

\*\*\*\*\* MAINTAIN PROPRIETARY CONFIDENTIALITY \*\*\*\*\*

BNSF RAILWAY COMPANY  
COMPANY ESTIMATE FOR  
SANBAG

LOCATION BASELINE

DETAILS OF ESTIMATE

PLAN ITEM: 000136814

VERSION: 1

## PURPOSE, JUSTIFICATION AND DESCRIPTION

BNSF TO PROVIDE FLAGGING AND INSPECTION TO WIDEN 9TH ST BRIDGE/215 FREEWAY  
100% BILLABLE TO SANBAG  
RDM JIMMY CAPPS DE ADAM RICHARDSON

MAINTAIN PROPRIETARY CONFIDENTIALITY  
THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS.  
PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS.  
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
FLAGGING - OTHER R.O.W. - CAP	4800.0 MH	115,696	
PAYROLL ASSOCIATED COSTS		50,906	
DA OVERHEADS		237,176	
TOTAL LABOR COST		403,778	403,778
***** MATERIAL *****			
TOTAL MATERIAL COST		0	0
***** OTHER *****			
CONTRACT PREPARATION	1.0 LS	20,000	
INSPECTION / COORDINATION	80.0 DAY	48,000	
TOTAL OTHER ITEMS COST		68,000	68,000
PROJECT SUBTOTAL			471,778
CONTINGENCIES			9,435
BILL PREPARATION FEE			0
GROSS PROJECT COST			481,213
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			481,213

## SANBAG Contract No. C09110

by and between

San Bernardino County Transportation Authority

and

California Department of Transportation and BNSF Railroad

for

Construction and Maintenance Agreement for I-215 Segment 2 Baseline Street Overhead

**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input checked="" type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID _____	<input type="checkbox"/> Yes _____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Amendment

**Notes:**

Original Contract:	\$ <u>787,823</u>	Previous Amendments Total:	\$ _____
Contingency Amount:	\$ _____	Previous Amendments Contingency Total:	\$ _____
		Current Amendment:	\$ _____
		Current Amendment Contingency:	\$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL → \$ 787,823.00**

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
83810000	5553	CMIA	TBD	\$ 350,000
83811000	5553	CMIA	TBD	\$ 437,823
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date: <u>12/3/08</u>	Contract Start: <u>12/3/08</u>	Contract End: <u>12/3/13</u>
New Amend. Approval (Board) Date: _____	Amend. Start: _____	Amend. End: _____

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: <u>08/09</u> \$ <u>0</u>	Future Fiscal Year(s) – Unbudgeted Obligation →	\$ <u>787,823</u>
-----------------------------	--	--	-------------------

Is this consistent with the adopted budget? ☒ Yes ☐ No

If yes, which Task includes budget authority? \_\_\_\_\_

If no, has the budget amendment been submitted? ☐ Yes ☒ No**CONTRACT MANAGEMENT**

Please mark an "X" next to all that apply:

☒ Intergovernmental    ☒ Private    ☐ Non-Local    ☐ Local    ☐ Partly Local
Disadvantaged Business Enterprise: ☐ No ☐ Yes \_\_\_\_\_ %Task Manager: Garry CohoeContract Manager: Dennis Saylor

Task Manager Signature

Date

Contract Manager Signature

Date

Chief Financial Officer Signature

Date

## OVERHEAD AGREEMENT

BNSF File No. 026112Y  
Baseline Street Overhead  
U.S. D.O.T. No. 026112Y

This Agreement ("**Agreement**"), is executed to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the STATE OF CALIFORNIA, acting through the Department of Transportation, hereinafter referred to as ("**STATE**") and the SAN BERNARDINO ASSOCIATED GOVERNMENTS, a body corporate and politic of the State of California, hereinafter referred to as ("**SANBAG**").

### RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of San Bernardino, County of San Bernardino, State of California;

WHEREAS, STATE and The Atchison, Topeka and Santa Fe Railway Company, predecessor in interest to BNSF, hereinafter referred to as ("**Santa Fe**"), entered into an agreement dated February 27, 1958, carried in BNSF's records as Contract No. CL-61878, ("**Original Agreement**") which provided for the construction and maintenance of five (5) grade separation structures comprising of Ninth Street, Baseline Street, 16<sup>th</sup> Street, Massachusetts Avenue, and 27<sup>th</sup> Street Overheads, over and across BNSF's rail corridor hereinafter referred to as ("**Rail Corridor**"), and over its tracks;

WHEREAS, the Original Agreement also provided for the installation of a 42 inch reinforced concrete drainage pipe in the vicinity of Baseline Street hereinafter referred to as ("**Drainage Pipe**");

WHEREAS, this Agreement covers the demolition and reconstruction of the Baseline Street Overhead and the continuation of the rights granted in the Original Agreement for the Drainage Pipe;

WHEREAS, STATE and the San Bernardino Associated Governments hereinafter referred to as "SANBAG", propose to reconstruct Interstate Highway I-215, through the City of San Bernardino, in order to accommodate the construction of High Occupancy Vehicle (HOV) lanes involving the demolition and reconstruction of the Baseline Street Overhead by means of a three span, 375.33 foot long cast-in-place post-tensioned box girder bridge supported on multi-column bents and high seat abutments. The abutments will be supported on 24-inch diameter pipe piles;

WHEREAS, STATE and SANBAG have entered into a Design Cooperative Agreement, dated September 3, 2008 providing for SANBAG's design for the reconstruction of the Segment 2 portion of the Interstate Highway I-215 reconstruction project, which includes the reconstruction of the Baseline Street Overhead.

WHEREAS, STATE and SANBAG will enter into a Construction Cooperative Agreement prior to the start of construction of the Project as described in Article I, Section 1 of this Agreement, that will provide for SANBAG's construction of the Project with STATE owning and maintaining the Structure as described in Article I, Section 1.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE I – SCOPE OF WORK**

1. The term "Project" as used herein includes any and all work related to the removal of the existing Baseline Street Overhead and the construction of a replacement Baseline Street Overhead, the construction of the I-215 On and Off Ramps (hereinafter referred to as the "Structure"), more particularly described on the Exhibit A attached hereto and incorporated herein, including the existing Drainage Pipe, and including but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

## **ARTICLE II – BNSF OBLIGATIONS**

In consideration of the covenants of STATE and SANBAG set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon STATE's payment to BNSF of the sum of Five Thousand Two Hundred and Eighty-eight and No/100 DOLLARS (\$5,288.00), BNSF shall grant to SANBAG, their successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's Rail Corridor described further on Exhibit A, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said rail corridor;
- (b) Construct, operate, maintain, renew and/or relocate upon said Rail Corridor, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with SANBAG's, or STATE's use and maintenance of the Structure;
- (c) Otherwise use or operate the Rail Corridor as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with SANBAG's, or STATE's use and maintenance of the Structure.

The Temporary Construction License shall be in the form attached hereto as Exhibit B and by this reference made a part hereof, and shall be for a term beginning on the authorized commencement date as set forth in Article III, Section 10 (c) (ii) and ending on the earlier of (i) completion of the Structure, or (ii) Sixty (60) months following the Effective Date of the Temporary Construction License. The Temporary Construction License and related rights to be given by BNSF to SANBAG shall be without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words therein contained. The Temporary Construction License shall be for the Project and for no other purpose. STATE acknowledges and agrees that STATE shall not have the right, under the Temporary Construction License, to use the Structure. In the event STATE or SANBAG is evicted by anyone owning, or claiming title to or any interest in said Rail Corridor, BNSF will not be liable to STATE or SANBAG for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to SANBAG pursuant to the Temporary Construction License.

Upon payment to BNSF of the additional sum of Thirty Four Thousand Six Hundred and Seventy-one and No/100 DOLLARS (\$34,671.00), such payment to be made within thirty (30) days of the giving of the notice required pursuant to Article III, Section 14 of this Agreement., BNSF shall deliver to STATE, its successors and assigns, a perpetual easement to enter upon and use that portion of BNSF's Rail Corridor described therein as is necessary to use and maintain the Structure. The Easement shall be in the form attached hereto as Exhibit B-1 and by this reference made a part hereof.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of SANBAG, which approval will not be unreasonably withheld. Construction of the Project will include the following principle elements of railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services necessary for the safety of BNSF's property and the operation of its trains during construction of the Project as set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project and;
- (e) Providing a contract project coordinator, at SANBAG's expense, to serve as a project manager for the Project;

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to

perform such work with its own employees working under applicable collective bargaining agreements or by contractor(s) if necessary.

4. SANBAG agrees to reimburse BNSF for work of an emergency nature caused by SANBAG or SANBAG's contractor in connection with the Project which is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of SANBAG and SANBAG agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge SANBAG for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send SANBAG progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Pursuant to the California Prompt Payment Act, CALIFORNIA CODES, GOVERNMENT CODE, SECTION 927-927.12., SANBAG must reimburse BNSF for completed force-account work within forty-five (45) calendar days from the date of SANBAG's receipt of the invoice for such work. Upon completion of the Project, BNSF will send SANBAG a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. If SANBAG fails to make payment of a BNSF invoice within said forty-five (45) days, SANBAG shall pay a penalty at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent pursuant to Section 927.6 (b) of said Government Code.

### **ARTICLE III – SANBAG OBLIGATIONS**

In consideration of the covenants of STATE and BNSF set forth herein and the faithful performance thereof, SANBAG agrees as follows:

1. SANBAG shall furnish to BNSF and STATE plans and specifications for the Project together with calculations with the railroad clearances expressed in **English Units**. One complete reduced size 11" x 17" paper copy shall be submitted to BNSF's Assistant Director of Structural Engineering. A PDF copy of the plans and specifications should be sent to both BNSF'S Manager Public Projects and BNSF'S Assistant Director Structural Engineering. The PDF copy with a file size of two (2) megabytes or less should be sent via an email attachment. Should the PDF copy of the plans and specifications exceed two (2) megabytes, a CD (Compact Disk) of the plans and specifications should be sent via overnight mail service to both BNSF offices. The email and mailing addresses are included in Article V, Section 23. Sets of said plans shall be submitted to BNSF and STATE for approval prior to commencement of any construction. BNSF will give SANBAG final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF'S final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet BNSF standard specifications, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound

and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building code.

2. SANBAG must provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the Project.

3. SANBAG must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

4. SANBAG must construct the Project as shown on the attached Exhibit A and do all work ("**SANBAG's Work**") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF herein. SANBAG must furnish all labor, materials, tools and equipment for the performance of SANBAG's Work. The principal elements of SANBAG's Work are as follows:

- (a) Preliminary and final Engineering;
- (b) Demolition and removal of the existing Baseline Street Overhead;
- (c) Design and the Construction of the Structure;
- (d) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's Rail Corridor;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Apply the D.O.T. Crossing Number 026112Y in a conspicuous location on the Structure.
- (g) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

5. SANBAG will facilitate the acquisition of a perpetual easement to be granted to BNSF to enter upon and use that portion of Baseline Street's right of way for the use and maintenance of BNSF's Signal House with easement area to include the land occupied by the Signal House at its original location and at its present location as shown on said Exhibit A.

6. SANBAG's Work must be performed by SANBAG or SANBAG's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

7. SANBAG must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, SANBAG must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

8. SANBAG or its contractor(s) shall submit one reduced size 11" x 17" paper copy, including calculations, expressed in **English Units** of the plans and specifications for proposed



shoring, falsework, or cribbing to be used over, under, or adjacent to BNSF'S tracks to BNSF'S Assistant Director Structural Engineering. SANBAG or its contractor(s) shall submit a PDF copy of the plans and specifications for the proposed shoring, falsework, or cribbing to both BNSF'S Manager Public Projects and BNSF'S Assistant Director Structural Engineering. The PDF copy with a file size of two (2) megabytes or less should be sent via an email attachment. Should the PDF copy of the plans and specifications exceed two (2) megabytes, a CD (Compact Disk) of the plans and specifications should be sent via overnight mail service to both BNSF offices for approval. The email and mailing addresses are included in Article V, Section 23. The shoring, falsework or cribbing used by SANBAG'S contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit F, and BNSF's Instructions FOR PREPARATION OF DEMOLITION PLANS as set forth in Exhibit G with both Exhibits attached to this Agreement and incorporated herein, and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

Falsework shall be designed according to the State of California, Department of Transportation FALSEWORK MANUAL available at this Web Site:

<http://www.dot.ca.gov/hq/esc/construction/manuals/Falsework/>.

9. SANBAG must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or Rail Corridor. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Project Engineer at telephone number 909 386 4079 and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF Rail Corridor or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for any BNSF Representative to stop construction at no cost to the SANBAG or BNSF until these items are completed.
- (c) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's Rail Corridor, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's Rail Corridor, and/or (3) any claim or cause of action for alleged loss of profits

or revenue by, or loss of service by a customer or user of such telecommunication company(ies). THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.

- (d) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

10. SANBAG must incorporate in each prime contract for construction of the Project, or the specifications therefore (i) the provisions set forth in Article III, Sections 6, 7, 8, 9, and 11; (ii) the provisions set forth in Article V, Sections 1, 2, 3, 4, 5, 6, 7, 11 and 12, and (iii) the provisions set forth in Exhibit C, Exhibit C-1, Exhibit F and Exhibit G, with the herein referenced Exhibits attached hereto and by reference made a part hereof.

11. Except as otherwise provided below in this Section 11, all construction work performed hereunder by SANBAG for the Project will be pursuant to a contract or contracts to be let by SANBAG, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's Rail Corridor must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's Rail Corridor until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in SANBAG's best interest, SANBAG may direct that the construction of the Project be done by day labor under the direction and control of SANBAG, or if at any time, in the opinion of SANBAG, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, SANBAG may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, SANBAG will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.
- (e) To facilitate scheduling for the Project, SANBAG shall have its contractor give BNSF's Project Engineer at telephone number 909 386 4079 eight (8) weeks

advance notice of the proposed times and dates for work windows. BNSF and SANBAG's contractor will establish mutually agreeable work windows for the Project. SANBAG shall inform its contractor that any request for work windows with less than eight (8) weeks advance notice will have a reduced probability of approval. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

- (f) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth in Exhibit F and the INSTRUCTIONS FOR PREPARATION OF DEMOLITION PLANS set forth in Exhibit G, with both Exhibits attached to this Agreement and incorporated herein.

12. SANBAG must advise the BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, SANBAG must notify BNSF's Manager of Public Projects, in writing, of the date on which SANBAG, and/or STATE and/or SANBAG's Contractor will meet with BNSF for the purpose of making final inspection of the Project.

13. TO THE FULLEST EXTENT PERMITTED BY LAW, SANBAG HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF SANBAG, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY SANBAG, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF SANBAG, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) SANBAG'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE GRANTED TO STATE PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO SANBAG PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) SANBAG'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RAIL CORRIDOR, OR (VII) AN ACT OR OMISSION OF SANBAG OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY SANBAG WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE

**PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

14. SANBAG must give BNSF's Manager of Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from SANBAG. The Notice to Proceed must reference BNSF's file number 026112Y.

#### **ARTICLE IV - STATE OBLIGATIONS**

**IN CONSIDERATION** of the covenants of BNSF and SANBAG herein contained and the faithful performance thereof, STATE agrees:

1. To permit SANBAG to act as the responsible lead agency to design and construct the Project.
2. STATE must make application to the Public Utilities Commission of the State of California ("**Commission**") for an order authorizing construction of the Project and to furnish to the Commission plans of the proposed construction, approved by BNSF, together with a copy of this agreement and to obtain all other required permits and approvals for the construction of the Project.
3. STATE will acquire all properties required to construct the Project and maintain the Structure;
4. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and STATE agree to the following terms upon completion of construction of the Project:
  - (a) STATE will own and maintain, at its sole cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement.
  - (b) STATE will arrange for removal of graffiti from the Structure;
  - (c) STATE must maintain D.O.T. Crossing Number 026112Y in legible condition in the conspicuous location on the Structure where applied by SANBAG during construction;
  - (d) It is understood by STATE that the right to install utilities is restricted to the placement of underground utilities beneath BNSF's tracks located a minimum of fifty (50) feet from abutments, piers, piles, or footings with the exception that upon BNSF's prior approval BNSF will permit selected utilities to be run through the deck of the Structure. Under no circumstances will utilities be allowed to hang from the Structure. All utility crossings within the limits of BNSF's Rail Corridor will be covered by separate agreements between BNSF and each of the owners of the utilities.

- (e) Upon request from BNSF, STATE shall remove all trash and debris associated with the Structure from BNSF's property.
- (f) In conformance with and limited to the applicable effect of California Laws insofar as the indemnity and insurance provisions set forth in any of the preceding sections or any rider, amendment or addendum hereto, State is self-insured. If State performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then STATE, shall provide BNSF defense and indemnification at least equal to the defense, indemnification and insurance provisions contained in Exhibit C-1 in accordance with California Government Code section 14662.5. Nothing herein shall be deemed to insure BNSF against its sole negligence or willful misconduct.

In the event any of the Work to be done on behalf of STATE upon BNSF's Rail Corridor is to be done by a contractor or subcontractor, said contractor or subcontractor shall provide to BNSF the insurance policies, certificates, binders, and/or endorsements in favor of BNSF as contained in said Exhibit C-1 as the same may be revised from time to time.

5. Subject to the restrictions imposed by Article V, Section 11 below, STATE must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's Rail Corridor for maintenance purposes. If the construction work hereunder is contracted, STATE must require its prime contractor(s) to comply with the obligations set forth in Exhibit C, Exhibit C-1 and Exhibit F, as the same may be revised from time to time. STATE will be responsible for its contractor(s) compliance with such obligations.

6. **PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 14662.5, STATE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS BNSF FROM, AND TO REPAIR OR PAY FOR, ANY DAMAGE PROXIMATELY CAUSED BY REASON OF THE USES AUTHORIZED BY THE EASEMENT SET FORTH IN EXHIBIT B-1 TO THIS AGREEMENT, AND THE TEMPORARY CONSTRUCTION LICENSE SET FORTH IN EXHIBIT B TO THIS AGREEMENT.**

## **ARTICLE V – JOINT OBLIGATIONS**

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.

2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F, the Instructions For Preparation Of Demolition Plans as set forth in Exhibit G, and the detailed plans and specifications approved by BNSF.

3. SANBAG must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF shall have the right to request any SANBAG employee, or STATE employee, who enters BNSF's Rail Corridor and because of their incompetence, neglect of duty, unsafe conduct or misconduct and/or they adversely affected BNSF's operations or facilities, be removed from the Rail Corridor. In the event SANBAG, or STATE elects not to honor such request, BNSF may stop work within its Rail Corridor until the matter has been fully resolved to BNSF's satisfaction. The party whose employee has been asked to leave the Rail Corridor will indemnify BNSF and the other parties against any claims arising from such removal.

5. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Contractor (or any of its subcontractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) STATE fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by STATE, Contractor or its subcontractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

SANBAG Director of Freeway Construction  
1170 W. 3rd Street, 2nd Floor  
San Bernardino, CA 92410  
Fax: (909) 388-2002.

6. SANBAG's or any STATE employee, agents, contractors, representatives and invitees shall wear Personal Protective Equipment ("PPE") when on the BNSF's Rail Corridor during construction of the Project or performing subsequent maintenance after completion of construction. The PPE shall meet applicable OSHA and ANSI specifications. Current BNSF PPE requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com). A partial list of

BNSF's PPE requirements include; a) safety glasses: permanently affixed side shields; no yellow lenses, b) hard hats with high visibility orange cover, c) safety shoes: hardened toe, above-the-ankle lace-up with a defined heel and d), high visibility retro-reflective orange vests are required as specified by BNSF's representative in charge of the Project. PPE requirements as defined on the web site, will be amended from time to time, and shall take precedence over the Partial list of requirements outlined in this Section 6 of Article V. Hearing protection, fall protection and respirators will be worn as required by State and Federal regulations.

7. SANBAG must supervise and inspect the operations of all SANBAG contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by SANBAG personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating Rail Corridor). Construction of the Project will not proceed until SANBAG corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify SANBAG Director of Freeway Construction for appropriate corrective action.

8. The Project funding is contemplated to come from mixed sources including Federal funds. Pursuant FEDERAL-AID POLICY GUIDE, dated December 9, 1991, Transmittal 1 23 CFR 646B which states projects for the reconstruction of existing grade separations are deemed to generally be of no ascertainable net benefit to the railroad and there shall be no required railroad share of the costs, unless the railroad has a specific contractual obligation with the State or its political subdivision to share in the costs.

9. Pursuant to this section and Article II, Section 6 herein, SANBAG must, out of funds made available to it for the construction of the Project, reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement.

10. All expenses detailed in statements sent to SANBAG pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement and the issuance of Notice to Proceed as more particularly described in Article III, Section 14.

11. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed, that would interfere with operations of the Rail Corridor will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

12. Subject to the restrictions imposed by Article V, Section 11 above, the construction of the Project will not commence until SANBAG gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number 026112Y. and must state the time that construction activities will begin.

13. Within 90 days of the conclusion of the Project and final acceptance by BNSF, SANBAG must provide BNSF with a complete electronic set of the bridge plans with the railroad clearances (prepared in English Units). BNSF will also accept a marked up paper copy of the bridge plans labeled "**As Built**". The marked up copy of those plans will reflect any and all deviations from the original plans that occurred during construction. The electronic set of bridge plans will be submitted in Micro Station \*.dgn electronic format (preferred) or AutoCAD \*.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. The "As Built" plans shall show actual measured "as constructed" clearances as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities. The As Built plans must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The As Built plans must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown. It is understood that BNSF prefers to receive the "As Built" plans in an electronic format.

14 BNSF may, at its expense, make future changes or additions to the railroad components of the Structure if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the Structure. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Structure, will be divided between BNSF and STATE in such shares as may be mutually agreed to by the parties hereto. Any alteration or reconstruction of the highway components of the Structure will be covered by a Commission order.

15. STATE may, at STATE's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of BNSF's Rail Corridor to a greater extent than is contemplated by the plans and specifications to be approved by BNSF pursuant to Article III, Section 1 herein, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement. Any alteration or reconstruction of the highway components of the Structure will be covered by a Commission order.

16. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto and the Federal Highway Administration, for a period of three (3) years from the date of the final BNSF invoice under this Agreement.

17. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.



18. In the event construction of the Project does not commence within three (3) years of the Effective Date, this Agreement will become null and void.

19. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

20. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

21. Only that portion of the aforesaid Original Agreement between the STATE and Santa Fe that pertains to the Baseline Street Overhead and the Drainage Pipe as originally constructed shall terminate on the completion date of the Project as provided for in Article III, Section 12 of this Agreement. The Original Agreement shall remain in full force and effect for the remaining four grade separations, Ninth Street, 16<sup>th</sup> Street, Massachusetts Avenue, and 27<sup>th</sup> Street until they are terminated by separate agreement. Such termination shall not release any party thereto from any liability or obligation thereunder, resulting from any act, omission or event happening prior to the date of termination or thereafter, in the event the terms of said Original Agreement provide that anything shall or may be done after termination thereof.

22. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein), together with previously acquired and recorded property rights if any, is the full and complete agreement between BNSF, STATE and SANBAG with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

23. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager of Public Projects  
740 E. Carnegie Drive  
San Bernardino, CA. 92408  
Email: [Melvin.Thomas@bnsf.com](mailto:Melvin.Thomas@bnsf.com)

Assistant Director Structural Engineering  
4515 Kansas Avenue  
Kansas City, KS 66106  
Email: [Donald.Lozano@bnsf.com](mailto:Donald.Lozano@bnsf.com)

SANBAG:

San Bernardino Associated Governments  
1170 W. 3rd Street, 2<sup>nd</sup>. Floor  
San Bernardino, CA 92410  
Attn. Director of Freeway Construction  
Fax: 909 388 2002

STATE:

Department of Transportation  
Division of Right of Way – Railroad  
Agreements  
1120 N. Street, MS 37  
Sacramento, CA. 95814

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_  
Printed Name: David L. Freeman  
Title: Vice President Engineering

WITNESS:

\_\_\_\_\_

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

By: \_\_\_\_\_  
Printed Name: Gary C. Ovitt  
Title: President - Board of Directors

APPROVED AS TO FORM:

\_\_\_\_\_  
Jean-Rene Basle  
SANBAG Counsel

**STATE OF CALIFORNIA**, acting by and through its  
Department of Transportation

By: \_\_\_\_\_  
Printed Name: Donald E. Grebe  
Title: Chief, Office of Project Delivery  
Division of Right of Way and Land Surveys

\_\_\_\_\_  
Attorney  
Department of Transportation

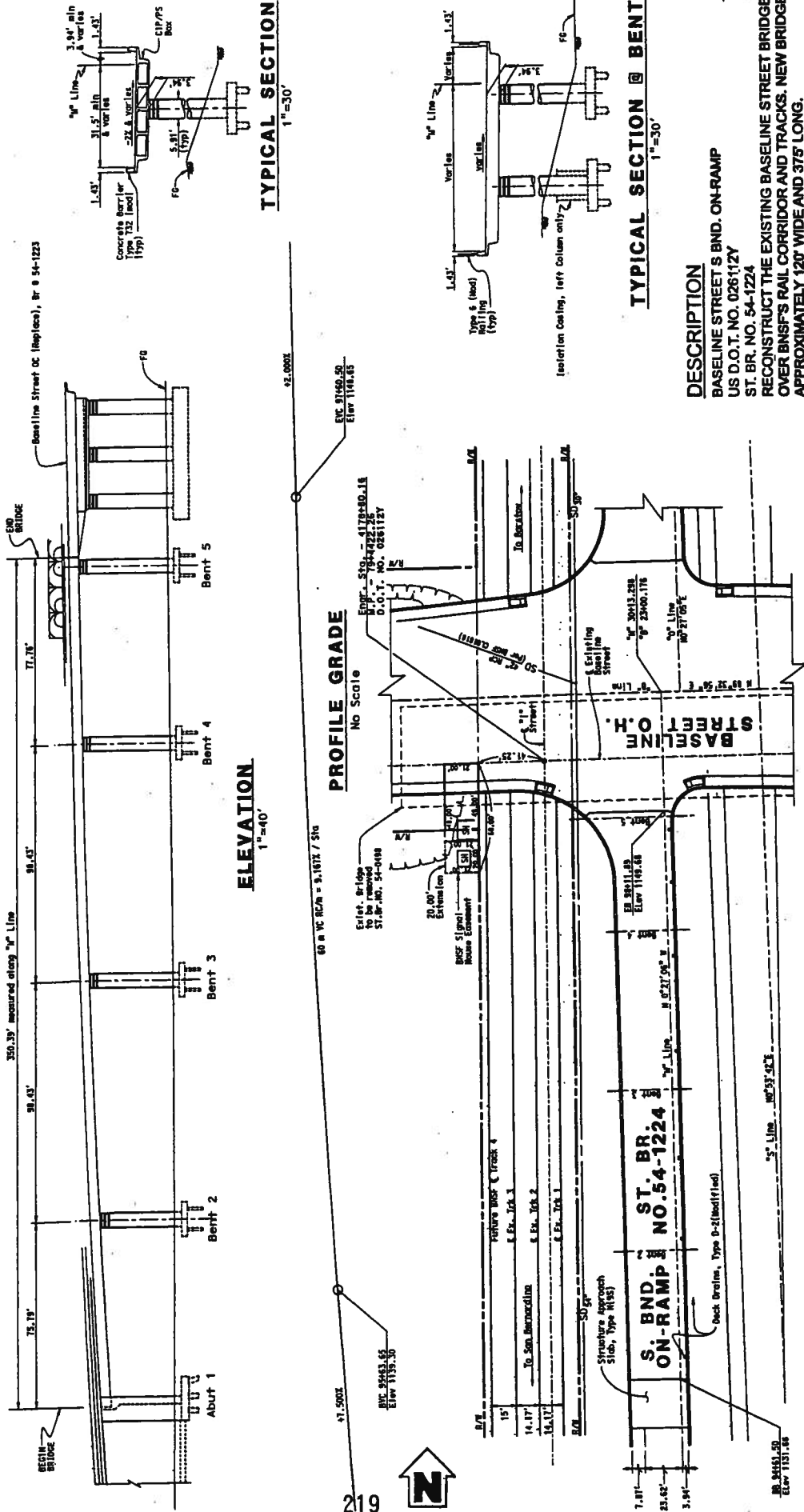
\_\_\_\_\_  
Approval Recommended  
Department of Transportation



**EXHIBIT "A"**  
**ATTACHED TO A CONTRACT BETWEEN**  
**BNSF RAILWAY COMPANY**  
**AND**  
**THE STATE OF CALIFORNIA**  
**AND**  
**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

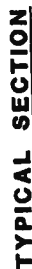
DAVID L. FREEMAN  
 VICE PRES. ENGINEERING

PORT WORTH, TEXAS  
 SCALE AS NOTED  
 CALIFORNIA DIVISION  
 LINE RECONSTRUCTION



FORT WORTH, TEXAS  
SCALE: AS NOTED  
CALIFORNIA DIVISION  
CAJON SUBDIVISION  
LINE SEGMENT 7800

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**



**DESCRIPTION**  
BASELINE STREET S. BND. OFF-RAMP  
US. D.O.T. No 028112Y  
ST. BR. NO. 54-1225  
RECONSTRUCT THE EXISTING BASELINE  
OVER BNSF'S RAIL CORRIDOR AND TR  
APPROXIMATELY 120' WIDE AND 375' L



**BASELINE STREET OVERHEAD**  
**EXHIBIT "A" 3 of 3**

# EXHIBIT D

\*\*\*\*\* MAINTAIN PROPRIETARY CONFIDENTIALITY \*\*\*\*\*

BNSF RAILWAY COMPANY  
COMPANY ESTIMATE FOR  
SANBAG

LOCATION ONO TO BASELINE

DETAILS OF ESTIMATE

PLAN ITEM : 000137253

VERSION : 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

BNSF TO PROVIDE FLAGGING AND INSPECTION TO WIDEN BASELINE AVE BRIDGE/215 FREEWAY  
100% BILLABLE TO SANBAG  
RDM JIMMY CAPPS DE ADAM RICHARDSON

MAINTAIN PROPRIETARY CONFIDENTIALITY  
THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS.  
PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS.  
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
FLAGGING - OTHER R.O.W.- CAP	8100.0 MH	195,237	
PAYROLL ASSOCIATED COSTS		85,904	
DA OVERHEADS		400,235	
TOTAL LABOR COST		681,376	681,376
***** MATERIAL *****			
TOTAL MATERIAL COST		0	0
***** OTHER *****			
CONTRACT PREPARATION	1.0 LS	10,000	
INSPECTION / COORDINATION	135.0 DAY	81,000	
TOTAL OTHER ITEMS COST		91,000	91,000
PROJECT SUBTOTAL			772,376
CONTINGENCIES			15,447
BILL PREPARATION FEE			0
GROSS PROJECT COST			787,823
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			787,823

by and between

San Bernardino County Transportation Authority

and

California Department of Transportation and BNSF Railroad

for

Construction and Maintenance Agreement for I-215 Segment 2 16th Street Overhead

**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input checked="" type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID _____	<input type="checkbox"/> Yes ____ % <input checked="" type="checkbox"/> No	<input type="checkbox"/> Amendment

**Notes:**

Original Contract: \$ <u>787,823</u>	Previous Amendments Total: \$ _____
Contingency Amount: \$ _____	Previous Amendments Contingency Total: \$ _____
	Current Amendment: \$ _____
	Current Amendment Contingency: \$ _____
Contingency Amount requires specific authorization by Task Manager prior to release.	
<b>Contract TOTAL → \$ 787,823.00</b>	

↓ Please include funding allocation for the original contract or the amendment.

Task	Cost Code	Funding Sources	Grant ID	Amounts
83810000	5553	CMIA	TBD	\$ 350,000
83811000	5553	CMIA	TBD	\$ 437,823
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

Original Board Approved Contract Date: 12/3/08 Contract Start: 12/3/08 Contract End: 12/3/13  
 New Amend. Approval (Board) Date: \_\_\_\_\_ Amend. Start: \_\_\_\_\_ Amend. End: \_\_\_\_\_

If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:

Approved Budget Authority →	Fiscal Year: <u>08/09</u> \$ <u>0</u>	Future Fiscal Year(s) - Unbudgeted Obligation →	\$ <u>787,823</u>
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Is this consistent with the adopted budget? ☒ Yes ☐ No  
 If yes, which Task includes budget authority? \_\_\_\_\_  
 If no, has the budget amendment been submitted? ☐ Yes ☒ No

**CONTRACT MANAGEMENT**

Please mark an "X" next to all that apply:

☒ Intergovernmental ☒ Private ☐ Non-Local ☐ Local ☐ Partly Local

Disadvantaged Business Enterprise: ☐ No ☐ Yes \_\_\_\_ %

Task Manager: <u>Garry Cohoe</u>	Contract Manager: <u>Dennis Saylor</u>
----------------------------------	--

<u>Garry Cohoe</u> Task Manager Signature	<u>11/6/08</u> Date	<u>Dennis Saylor</u> Contract Manager Signature	<u>11/21/08</u> Date
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<u>Della Stewart</u> Chief Financial Officer Signature	<u>11/4/08</u> Date
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## OVERHEAD AGREEMENT

BNSF File No. 026110K  
16th. Street Overhead  
U.S. D.O.T. No. 026110K

This Agreement ("**Agreement**"), is executed to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the STATE OF CALIFORNIA, acting through the Department of Transportation, hereinafter referred to as ("**STATE**") and the SAN BERNARDINO ASSOCIATED GOVERNMENTS, a body corporate and politic of the State of California, hereinafter referred to as ("**SANBAG**").

### RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the City of San Bernardino, County of San Bernardino, State of California;

WHEREAS, STATE and The Atchison, Topeka and Santa Fe Railway Company, predecessor in interest to BNSF, hereinafter referred to as ("**Santa Fe**"), entered into an agreement dated February 27, 1958, carried in BNSF's records as Contract No. CL-61878, ("**Original Agreement**") which provided for the construction and maintenance of five (5) grade separation structures comprising of Ninth Street, Baseline Street, 16<sup>th</sup> Street, Massachusetts Avenue, and 27<sup>th</sup> Street Overheads, over and across BNSF's rail corridor hereinafter referred to as ("**Rail Corridor**"), and over its tracks;

WHEREAS, this Agreement covers the demolition and reconstruction of the 16th Street Overhead only;

WHEREAS, STATE and the San Bernardino Associated Governments hereinafter referred to as "SANBAG", propose to reconstruct Interstate Highway I-215, through the City of San Bernardino, in order to accommodate the construction of High Occupancy Vehicle (HOV) lanes involving the demolition and reconstruction of the 16th. Street Overhead by means of a six span 675 ft-9 in. long cast-in-place post-tensioned box girder bridge supported on multi-column bents and short seat abutments all supported on driven steel pipe pile foundations;

WHEREAS, STATE and SANBAG have entered into a Design Cooperative Agreement, dated September 3, 2008 providing for SANBAG's design for the reconstruction of the Segment 2 portion of the Interstate Highway I-215 reconstruction project, which includes the reconstruction of the 16th. Street Overhead.

WHEREAS, STATE and SANBAG will enter into a Construction Cooperative Agreement prior to the start of construction of the Project as described in Article I, Section 1 of this Agreement, that will provide for SANBAG's construction of the Project with STATE owning and maintaining the Structure as described in Article I, Section 1.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE I – SCOPE OF WORK

1. The term "Project" as used herein includes any and all work related to the removal of the existing 16th. Street Overhead and the construction of a replacement 16th. Street Overhead, (hereinafter referred to as the "Structure"), more particularly described on the Exhibit A attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

## ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of STATE and SANBAG set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon STATE's payment to BNSF of the sum of One Hundred Ten Thousand Five Hundred and Fifty-two and No/100 DOLLARS (\$110,552.00), BNSF shall grant to SANBAG, their successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's Rail Corridor described further on Exhibit A, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said rail corridor;
- (b) Construct, operate, maintain, renew and/or relocate upon said Rail Corridor, without limitation, such facilities as the BNSF may from time to time deem appropriate, provided such facilities do not materially interfere with SANBAG's, or STATE's use and maintenance of the Structure;
- (c) Use or operate the Rail Corridor as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with SANBAG's, or STATE's use and maintenance of the Structure.

The Temporary Construction License shall be in the form attached hereto as Exhibit B and by this reference made a part hereof, and shall be for a term beginning on the authorized commencement date as set forth in Article III, Section 10 (c) (ii) and ending on the earlier of (i) completion of the Structure, or (ii) Sixty (60) months following the Effective Date of the Temporary Construction License. The Temporary Construction License and related rights to be given by BNSF to SANBAG shall be without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words therein contained. The Temporary Construction License shall be for the Project and for no other

purpose. STATE acknowledges and agrees that STATE shall not have the right, under the Temporary Construction License, to use the Structure. In the event STATE or SANBAG is evicted by anyone owning, or claiming title to or any interest in said Rail Corridor, BNSF will not be liable to STATE or SANBAG for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to SANBAG pursuant to the Temporary Construction License.

Upon payment to BNSF of the additional sum of Five Thousand Three Hundred and Ninety-Six and No/100 DOLLARS (\$5,396.00), such payment to be made within thirty (30) days of the giving of the notice required pursuant to Article III, Section 15 of this Agreement, BNSF shall deliver to STATE, its successors and assigns, a perpetual easement to enter upon and use that portion of BNSF's Rail Corridor described therein as is necessary to use and maintain the Structure. The Easement shall be in the form attached hereto as Exhibit B-1 and by this reference made a part hereof.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of SANBAG, which approval will not be unreasonably withheld. Construction of the Project will include the following principle elements of railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services necessary for the safety of BNSF's property and the operation of its trains during construction of the Project as set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Providing a contract project coordinator, at SANBAG's expense, to serve as a project manager for the Project and;
- (f) Protect the track for train operations during the removal of the footing for existing Bent No. 3 from BNSF property

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements or by contractor(s) if necessary.

4. SANBAG agrees to reimburse BNSF for work of an emergency nature caused by SANBAG or SANBAG's contractor in connection with the Project which is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of SANBAG and SANBAG agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge SANBAG for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send SANBAG progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Pursuant to the California Prompt Payment Act, CALIFORNIA CODES, GOVERNMENT CODE, SECTION 927-927.12., SANBAG must reimburse BNSF for completed force-account work within forty-five (45) calendar days from the date of SANBAG's receipt of the invoice for such work. Upon completion of the Project, BNSF will send SANBAG a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. If SANBAG fails to make payment of a BNSF invoice within said forty-five (45) days, SANBAG shall pay a penalty at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent pursuant to Section 927.6 (b) of said Government Code.

### **ARTICLE III – SANBAG OBLIGATIONS**

In consideration of the covenants of STATE and BNSF set forth herein and the faithful performance thereof, SANBAG agrees as follows:

1. SANBAG shall furnish to BNSF and STATE plans and specifications for the Project together with calculations with the railroad clearances expressed in **English Units**. One complete reduced size 11" x 17" paper copy shall be submitted to BNSF's Assistant Director of Structural Engineering. A PDF copy of the plans and specifications should be sent to both BNSF'S Manager Public Projects and BNSF'S Assistant Director Structural Engineering. The PDF copy with a file size of two (2) megabytes or less should be sent via an email attachment. Should the PDF copy of the plans and specifications exceed two (2) megabytes, a CD (Compact Disk) of the plans and specifications should be sent via overnight mail service to both BNSF offices. The email and mailing addresses are included in Article V, Section 23. Sets of said plans shall be submitted to BNSF and STATE for approval prior to commencement of any construction. BNSF will give SANBAG final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF'S final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet BNSF standard specifications, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.

2. SANBAG must provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the Project.

3. SANBAG must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

4. SANBAG must construct the Project as shown on the attached Exhibit A and do all work ("SANBAG's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF herein. SANBAG must furnish all labor, materials, tools and equipment for the performance of SANBAG's Work. The principal elements of SANBAG's Work are as follows:

- (a) Preliminary and final Engineering;
- (b) Demolition and removal of the existing 16th. Street Overhead;
- (c) Design and the Construction of the Structure;
- (d) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's Rail Corridor;
- (e) Provide suitable drainage, both temporary and permanent;
- (f) Apply the D.O.T. Crossing Number 026110K in a conspicuous location on the Structure.
- (g) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

5. SANBAG will install tie backs on BNSF's property required for installation of temporary shoring needed to construct a permanent retaining wall on State right of way with the retaining wall more or less paralleling the Rail Corridor. Upon removal of the temporary shoring, BNSF has agreed to allow the tie backs to be abandoned in place on BNSF's Rail Corridor as shown on Exhibit A.

6. SANBAG shall remove the portion of the footing for existing Bent No. 3 that is located on BNSF property; conditioned upon BNSF granting a work window for this task.

7. SANBAG's Work must be performed by SANBAG or SANBAG's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

8. SANBAG must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, SANBAG must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

9. SANBAG or its contractor(s) shall submit one reduced size 11" x 17" paper copy, including calculations, expressed in **English Units** of the plans and specifications for proposed shoring, falsework, or cribbing to be used over, under, or adjacent to BNSF'S tracks to BNSF'S Assistant Director Structural Engineering. SANBAG or its contractor(s) shall submit a PDF copy of the plans and specifications for the proposed shoring, falsework, or cribbing to both BNSF'S Manager Public Projects and BNSF'S Assistant Director Structural Engineering. The PDF copy with a file size of two (2) megabytes or less should be sent via an email attachment. Should the PDF copy of the plans and specifications exceed two (2) megabytes, a CD (Compact Disk) of the plans and specifications should be sent via overnight mail service to both BNSF offices for approval. The email and mailing addresses are included in Article V, Section 23. The shoring, falsework or cribbing used by SANBAG'S contractor shall comply with the BNSF Bridge Requirements set forth on Exhibit E, and BNSF's Instructions FOR PREPARATION OF DEMOLITION PLANS as set forth in Exhibit G with both Exhibits attached to this Agreement and incorporated herein, and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.

Falsework shall be designed according to the State of California, Department of Transportation FALSEWORK MANUAL available at this Web Site:  
<http://www.dot.ca.gov/hq/esc/construction/manuals/Falsework/>.

10. SANBAG must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or Rail Corridor. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Project Engineer at telephone number 909 386 4079 and/or the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF Rail Corridor or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for any BNSF Representative to stop construction at no cost to SANBAG or BNSF until these items are completed.
- (c) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's Rail Corridor, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its

contractor, agents and/or employees, on BNSF's property or within BNSF's Rail Corridor, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

- (d) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.

11. SANBAG must incorporate in each prime contract for construction of the Project, or the specifications therefore (i) the provisions set forth in Article III, Sections 5, 6, 7, 8, 9, 10 and 12; (ii) the provisions set forth in Article V, Sections 1, 2, 3, 4, 5, 6, 7, 11 and 12; and (iii) the provisions set forth in Exhibit C, Exhibit C-1, Exhibit F and Exhibit G, with the herein referenced Exhibits attached hereto and by reference made a part hereof.

12. Except as otherwise provided below in this Section 12, all construction work performed hereunder by SANBAG for the Project will be pursuant to a contract or contracts to be let by SANBAG, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's Rail Corridor must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's Rail Corridor until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in SANBAG's best interest, SANBAG may direct that the construction of the Project be done by day labor under the direction and control of SANBAG, or if at any time, in the opinion of SANBAG, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, SANBAG may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, SANBAG will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.

- (e) To facilitate scheduling for the Project, SANBAG shall have its contractor give BNSF's Project Engineer at telephone number 909 386 4079 eight (8) weeks advance notice of the proposed times and dates for work windows. BNSF and SANBAG's contractor will establish mutually agreeable work windows for the Project. SANBAG shall inform its contractor that any request for work windows with less than eight (8) weeks advance notice will have a reduced probability of approval. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.
- (f) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth in Exhibit F and the INSTRUCTIONS FOR PREPARATION OF DEMOLITION PLANS set forth in Exhibit G, with both Exhibits attached to this Agreement and incorporated herein.

13. SANBAG must advise the BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, SANBAG must notify BNSF's Manager of Public Projects, in writing, of the date on which SANBAG, and/or STATE and/or SANBAG's Contractor will meet with BNSF for the purpose of making final inspection of the Project.

14. TO THE FULLEST EXTENT PERMITTED BY LAW, SANBAG HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF SANBAG, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY SANBAG, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF SANBAG, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) SANBAG'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE GRANTED TO SANBAG PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO SANBAG PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) SANBAG'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RAIL CORRIDOR, OR (VII) AN ACT OR OMISSION OF SANBAG OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY SANBAG WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS,



**EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE WILLFUL MISCONDUCT OR SOLE NEGLIGENCE OF BNSF.**

15. SANBAG must give BNSF's Manager of Public Projects written notice to proceed ("Notice to Proceed") with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from SANBAG. The Notice to Proceed must reference BNSF's file number 026110K.

#### **ARTICLE IV - STATE OBLIGATIONS**

**IN CONSIDERATION** of the covenants of BNSF and SANBAG herein contained and the faithful performance thereof, STATE agrees:

1. To permit SANBAG to act as the responsible lead agency to design and construct the Project.
2. STATE must make application to the Public Utilities Commission of the State of California ("**Commission**") for an order authorizing construction of the Project and to furnish to the Commission plans of the proposed construction, approved by BNSF, together with a copy of this agreement and to obtain all other required permits and approvals for the construction of the Project.
3. STATE will acquire all properties required to construct the Project and maintain the Structure;
4. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and STATE agree to the following terms upon completion of construction of the Project:
  - (a) STATE will own and maintain, at its sole cost and expense, the Structure, the highway approaches, and appurtenances thereto, lighting, drainage and any access roadways to BNSF gates installed pursuant to this Agreement.
  - (b) STATE will arrange for removal of graffiti from the Structure;
  - (c) STATE must maintain D.O.T. Crossing Number 026110K in legible condition in the conspicuous location on the Structure where applied by SANBAG during construction;
  - (d) It is understood by STATE that the right to install utilities is restricted to the placement of underground utilities beneath BNSF's tracks located a minimum of fifty (50) feet from abutments, piers, piles, or footings with the exception that upon BNSF's prior approval BNSF will permit selected utilities to be run through the deck of the Structure. Under no circumstances will utilities be allowed to hang from the Structure. All utility crossings within the limits of BNSF's Rail Corridor will be covered by separate agreements between BNSF and each of the owners of the utilities.

- (e) Upon request from BNSF, STATE shall remove all trash and debris associated with the Structure from BNSF's property.
- (f) In conformance with and limited to the applicable effect of California Laws insofar as the indemnity and insurance provisions set forth in any of the preceding sections or any rider, amendment or addendum hereto, State is self-insured. If State performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then STATE, shall provide BNSF defense and indemnification at least equal to the defense, indemnification and insurance provisions contained in Exhibit C-1 in accordance with California Government Code section 14662.5. Nothing herein shall be deemed to insure BNSF against its sole negligence or willful misconduct.

In the event any of the Work to be done on behalf of STATE upon BNSF's Rail Corridor is to be done by a contractor or subcontractor, said contractor or subcontractor shall provide to BNSF the insurance policies, certificates, binders, and/or endorsements in favor of BNSF as contained in said Exhibit C-1 as the same may be revised from time to time.

5. Subject to the restrictions imposed by Article V, Section 11 below, STATE must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's Rail Corridor for maintenance purposes. If the construction work hereunder is contracted, STATE must require its prime contractor(s) to comply with the obligations set forth in Exhibit C, Exhibit C-1 and Exhibit F, as the same may be revised from time to time. STATE will be responsible for its contractor(s) compliance with such obligations.

6. PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 14662.5, STATE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS BNSF FROM, AND TO REPAIR OR PAY FOR, ANY DAMAGE PROXIMATELY CAUSED BY REASON OF THE USES AUTHORIZED BY THE EASEMENT SET FORTH IN EXHIBIT B-1 TO THIS AGREEMENT, AND THE TEMPORARY CONSTRUCTION LICENSE SET FORTH IN EXHIBIT B TO THIS AGREEMENT.

## ARTICLE V – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.

2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F, the Instructions For Preparation Of Demolition Plans as set forth in Exhibit G, and the detailed plans and specifications approved by BNSF.

3. SANBAG must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF shall have the right to request any SANBAG employee, or STATE employee, who enters BNSF's Rail Corridor and because of their incompetence, neglect of duty, unsafe conduct or misconduct and/or they adversely affected BNSF's operations or facilities, be removed from the Rail Corridor. In the event SANBAG, or STATE elects not to honor such request, BNSF may stop work within its Rail Corridor until the matter has been fully resolved to BNSF's satisfaction. The party whose employee has been asked to leave the Rail Corridor will indemnify BNSF and the other parties against any claims arising from such removal.

5. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Contractor (or any of its subcontractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) STATE fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by STATE, Contractor or its subcontractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

SANBAG Director of Freeway Construction  
1170 W. 3rd Street, 2nd Floor  
San Bernardino, CA 92410  
Fax: (909) 388-2002.

6. SANBAG's or any STATE employee, agents, contractors, representatives and invitees shall wear Personal Protective Equipment ("PPE") when on the BNSF's Rail Corridor during construction of the Project or performing subsequent maintenance after completion of construction. The PPE shall meet applicable OSHA and ANSI specifications. Current BNSF PPE requirements are listed on the web site, [www.contractororientation.com](http://www.contractororientation.com). A partial list of BNSF's PPE requirements include; a) safety glasses: permanently affixed side shields; no yellow lenses, b) hard hats with high visibility orange cover, c) safety shoes: hardened toe, above-the-ankle lace-up with a defined heel and d), high visibility retro-reflective orange vests are required as specified by BNSF's representative in charge of the Project. PPE requirements as defined on the web site, will be amended from time to time, and shall take precedence over the Partial list of requirements outlined in this Section 6 of Article V. Hearing protection, fall protection and respirators will be worn as required by State and Federal regulations.

7. SANBAG must supervise and inspect the operations of all SANBAG contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by SANBAG personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating Rail Corridor). Construction of the Project will not proceed until SANBAG corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify SANBAG Director of Freeway Construction for appropriate corrective action.

8. The Project funding is contemplated to come from mixed sources including Federal funds. Pursuant FEDERAL-AID POLICY GUIDE, dated December 9, 1991, Transmittal 1 23 CFR 646B which states projects for the reconstruction of existing grade separations are deemed to generally be of no ascertainable net benefit to the railroad and there shall be no required railroad share of the costs, unless the railroad has a specific contractual obligation with the State or its political subdivision to share in the costs. Additionally pursuant to the Commission's Code 1202.5 (d) BNSF is not required to contribute to the cost to reconstruct the 16<sup>th</sup>. Street Overhead as BNSF did not contribute to the cost to construct the existing 16<sup>th</sup>. Street Overhead.

9. Pursuant to this section and Article II, Section 6 herein, SANBAG must, out of funds made available to it for the construction of the Project, reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement.

10. All expenses detailed in statements sent to SANBAG pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement and the issuance of Notice to Proceed as more particularly described in Article III, Section 15.

11. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed, that would interfere with operations of the Rail Corridor will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone

number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

12. Subject to the restrictions imposed by Article V, Section 11 above, the construction of the Project will not commence until SANBAG gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number 026110K. and must state the time that construction activities will begin.

13. Within 90 days of the conclusion of the Project and final acceptance by BNSF, SANBAG must provide BNSF with a complete electronic set of the bridge plans with the railroad clearances (prepared in English Units). BNSF will also accept a marked up paper copy of the bridge plans labeled "As Built". The marked up copy of those plans will reflect any and all deviations from the original plans that occurred during construction. The electronic set of bridge plans will be submitted in Micro Station \*.dgn electronic format (preferred) or AutoCAD \*.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. The "As Built" plans shall show actual measured "as constructed" clearances as well as depth, size and location of all foundation components. The plans shall show dimensioned locations of existing and relocated utilities. The As Built plans must comply with the Bridge Requirements set forth on Exhibit F and depicts all information in BNSF engineering stationing and mile post pluses. The As Built plans must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown. It is understood that BNSF prefers to receive the "As Built" plans in an electronic format.

14 BNSF may, at its expense, make future changes or additions to the railroad components of the Structure if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the highway components of the Structure. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the highway components of the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by any such changes to the Structure, will be divided between BNSF and STATE in such shares as may be mutually agreed to by the parties hereto Any alteration or reconstruction of the highway components of the Structure will be covered by a Commission order.

15. STATE may, at STATE's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of BNSF's Rail Corridor to a greater extent than is contemplated by the plans and specifications to be approved by BNSF pursuant to Article III, Section 1 herein, without obtaining BNSF's prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement. Any alteration or reconstruction of the highway components of the Structure will be covered by a Commission order.

16. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized

representatives of the parties hereto and the Federal Highway Administration, for a period of three (3) years from the date of the final BNSF invoice under this Agreement.

17. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

18. In the event construction of the Project does not commence within three (3) years of the Effective Date, this Agreement will become null and void.

19. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

20. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

21. Only that portion of the aforesaid Original Agreement between the STATE and Santa Fe that pertains to the 16th. Street Overhead as originally constructed shall terminate on the completion date of the Project as provided for in Article III, Section 13 of this Agreement. The Original Agreement shall remain in full force and effect for the remaining four grade separations, Ninth Street, Baseline Street, Massachusetts Avenue, and 27<sup>th</sup> Street until they are terminated by separate agreement. Such termination shall not release any party thereto from any liability or obligation thereunder, resulting from any act, omission or event happening prior to the date of termination or thereafter, in the event the terms of said Original Agreement provide that anything shall or may be done after termination thereof.

22. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein), together with previously acquired and recorded property rights if any, is the full and complete agreement between BNSF, STATE and SANBAG with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

23. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager of Public Projects  
740 E. Carnegie Drive  
San Bernardino, CA. 92408  
Email: [Melvin.Thomas@bnsf.com](mailto:Melvin.Thomas@bnsf.com)

Assistant Director Structural Engineering  
4515 Kansas Avenue  
Kansas City, KS 66106  
Email: [Donald.Lozano@bnsf.com](mailto:Donald.Lozano@bnsf.com)

SANBAG:

San Bernardino Associated Governments  
1170 W. 3rd Street, 2<sup>nd</sup>. Floor  
San Bernardino, CA 92410  
Attn. Director of Freeway Construction  
Fax: 909 388 2002

STATE:

Department of Transportation  
Division of Right of Way – Railroad  
Agreements  
1120 N. Street, MS 37  
Sacramento, CA. 95814

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_  
Printed Name: David L. Freeman  
Title: Vice President Engineering

WITNESS:

\_\_\_\_\_

**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

By: \_\_\_\_\_  
Printed Name: Gary C. Ovitt  
Title: President - Board of Directors

APPROVED AS TO FORM:

\_\_\_\_\_  
Jean-Rene Basle  
SANBAG Counsel

**STATE OF CALIFORNIA**, acting by and through its  
Department of Transportation

By: \_\_\_\_\_  
Printed Name: Donald E. Grebe  
Title: Chief, Office of Project Delivery  
Division of Right of Way and Land Surveys

\_\_\_\_\_  
Attorney  
Department of Transportation

\_\_\_\_\_  
Approval Recommended  
Department of Transportation



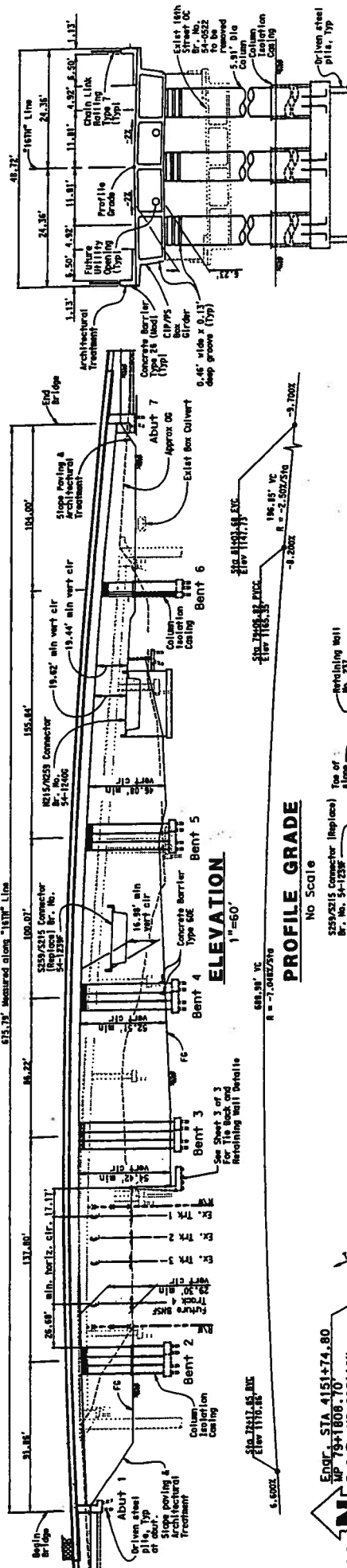
# EXHIBIT "A"

ATTACHED TO A CONTRACT BETWEEN  
BNSF RAILWAY COMPANY  
AND  
THE STATE OF CALIFORNIA  
AND  
SAN BERNARDINO ASSOCIATED GOVERNMENTS

FORT WORTH, TEXAS  
SCALE: AS NOTED  
CALIFORNIA DIVISION  
CALDWAY SUBDIVISION  
LINE SEGMENT 7000

DAVID L. FRESMAN  
VICE PRES. ENGINEERING

675.75' Measured along "16TH" Line



## ELEVATION

1"=60'

## PROFILE GRADE

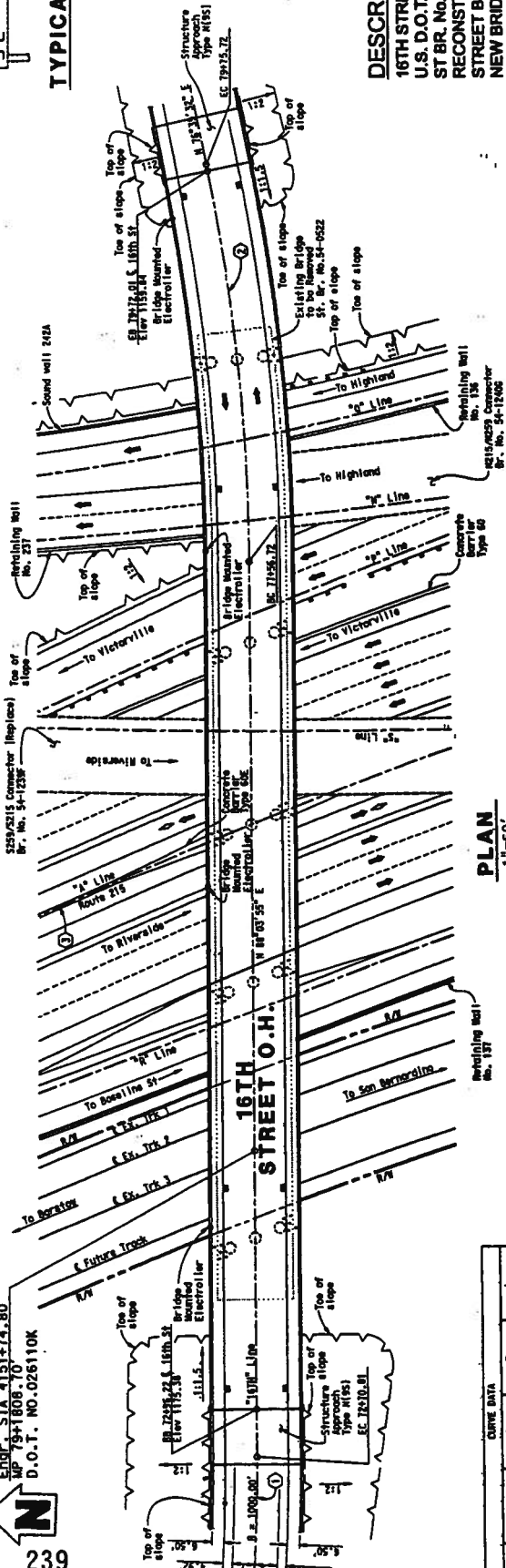
NO SCALE

EDGAR, STA 4151+74.80  
UP 74+76.08 TO  
D.O.T. NO. 026110K

239

## TYPICAL SECTION

1"=20'



## PLAN

1"=60'

## DESCRIPTION

16TH STREET OVERHEAD  
U.S. D.O.T. NO. 026110K  
ST BR. NO. 54-1241  
RECONSTRUCT THE EXISTING 16TH  
STREET BRIDGE OVER I-215 WITH A  
NEW BRIDGE APPROXIMATELY  
48' WIDE AND 676' LONG.

16th STREET OVERHEAD  
EXHIBIT "A" Sheet 1 of 3

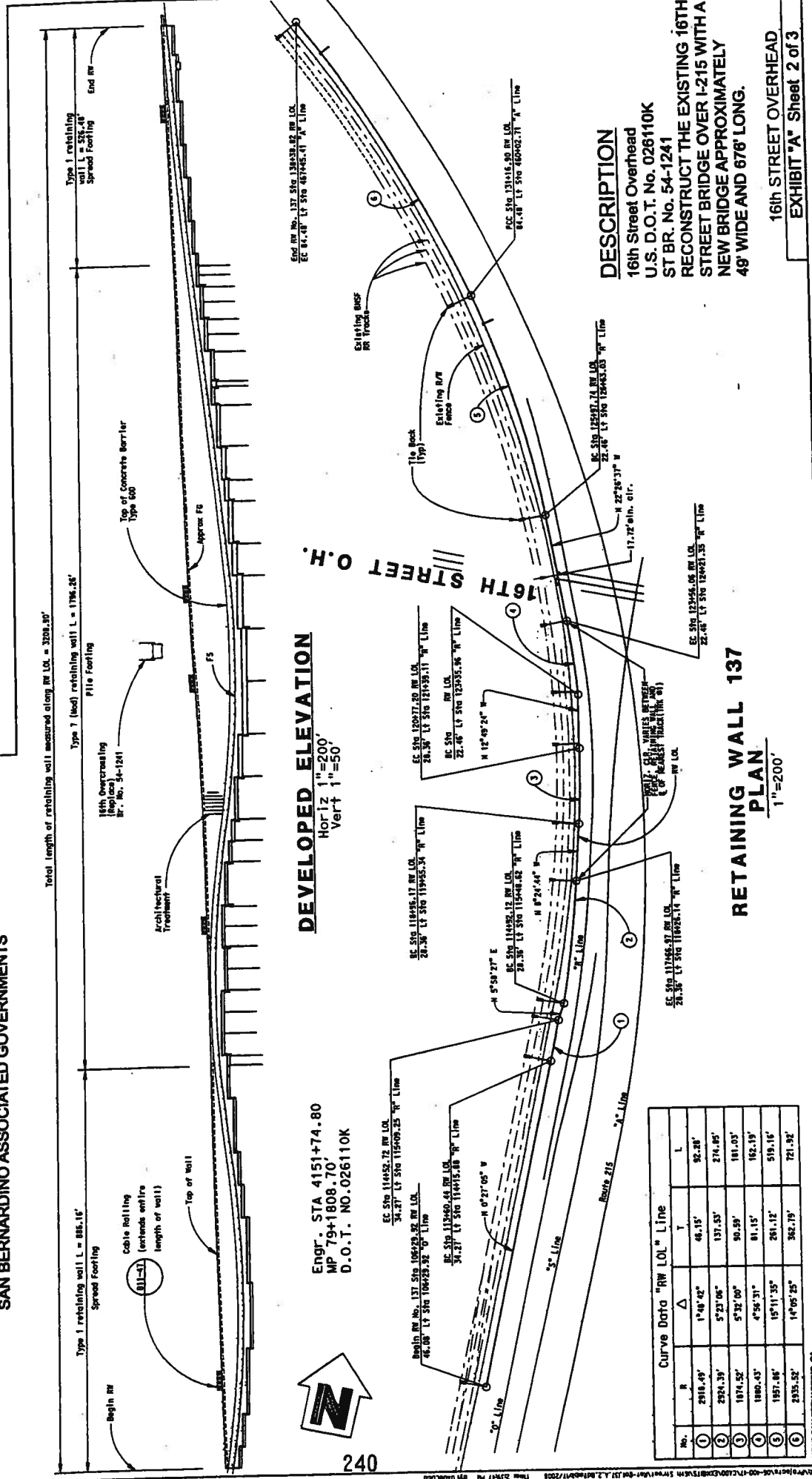
CURVE DATA					
St.	Sta.	Δ	T	L	
1	1000.00	17°10'00"	150.84'	259.70'	
2	1100.04	18°24'25"	109.85'	215.00'	
3	2020.00	52°30'21"	1489.48'	2787.52'	

NEAR SAN BERNARDINO, CA  
SAN BERNARDINO COUNTY, CALIFORNIA

**EXHIBIT "A"**  
**ATTACHED TO A CONTRACT BETWEEN**  
**BNSF RAILWAY COMPANY**  
**AND**  
**THE STATE OF CALIFORNIA**  
**AND**  
**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

PORT WORTH, TEXAS  
 SCALE: AS NOTED  
 CALIFORNIA DIVISION  
 CALIFORNIA DIVISION  
 LINE BECOMENT 7700

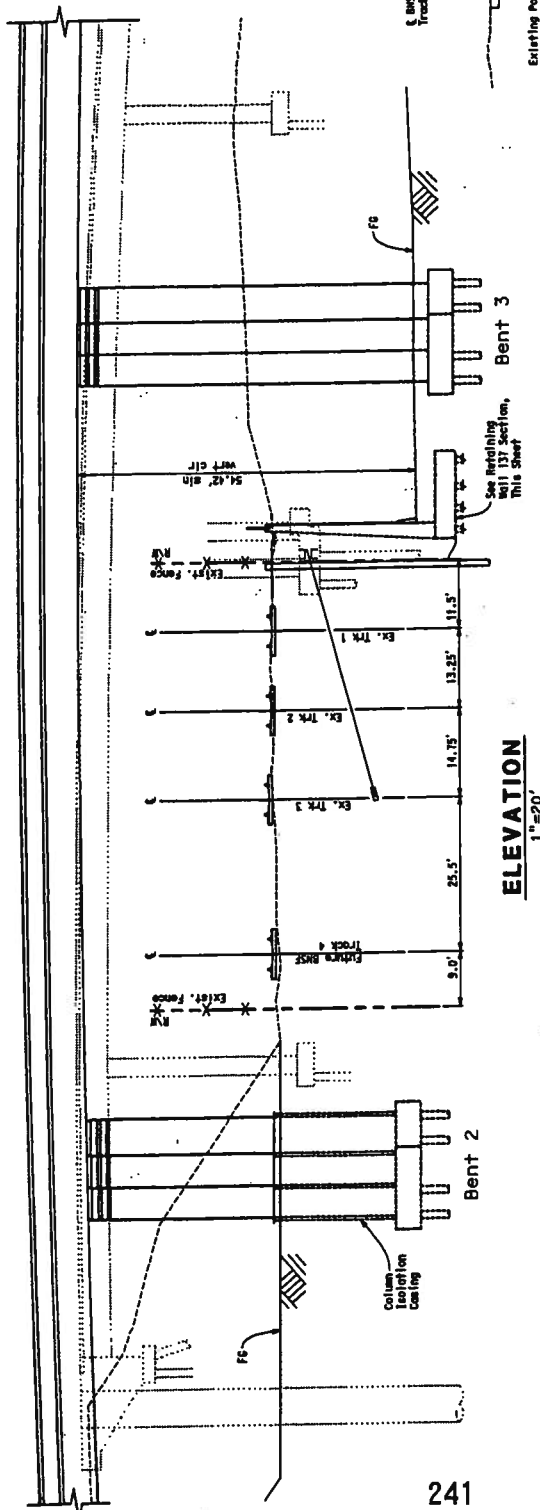
DAVID L. FRIEDMAN  
 VICE PRES. ENGINEERING



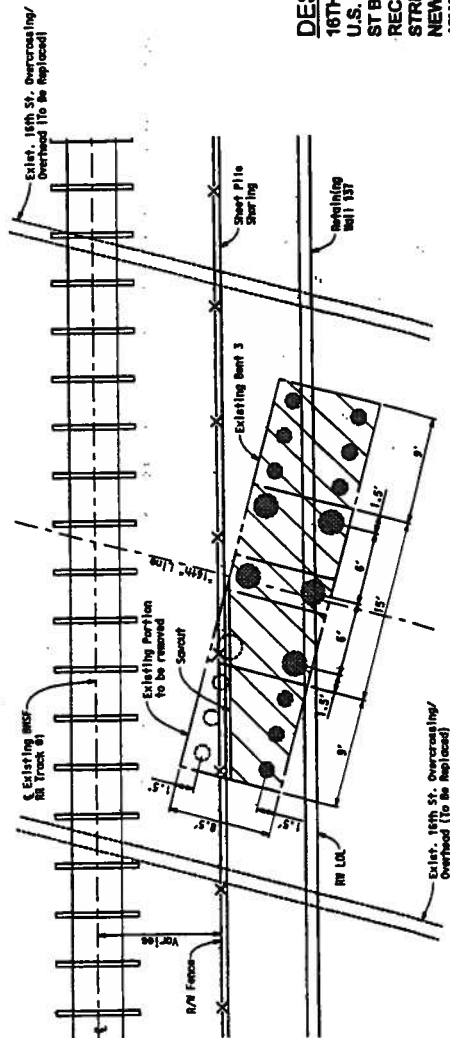
**EXHIBIT "A"**  
**ATTACHED TO A CONTRACT BETWEEN**  
**BNSF RAILWAY COMPANY**  
**AND**  
**THE STATE OF CALIFORNIA**  
**AND**  
**SAN BERNARDINO ASSOCIATED GOVERNMENTS**

FORT WORTH, TEXAS  
 SCALE: AS NOTED  
 CALIFORNIA DIVISION  
 CALIFORNIA SUBDIVISION  
 LINE SEGMENT 7000

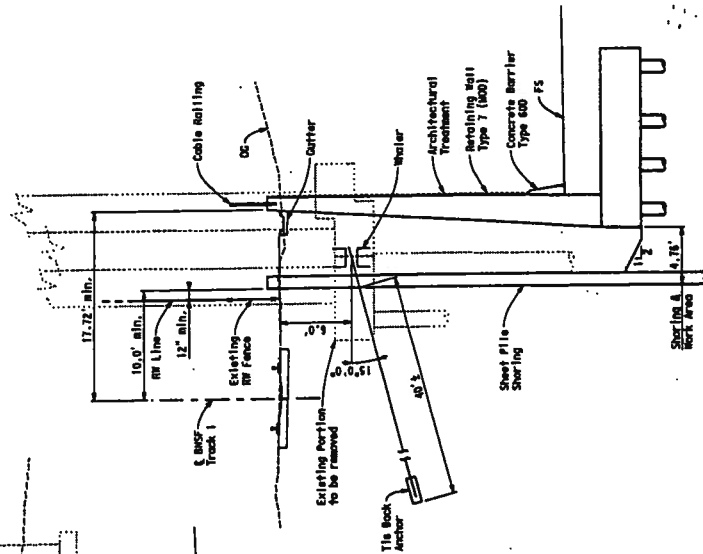
DAVID L. FREEMAN  
 VICE PRES. ENGINEERING



**ELEVATION**  
 1"=20'



**FOOTING PLAN**  
 1"=10'



**RETAINING WALL 137**  
 SECTION  
 1"=10'

**DESCRIPTION**  
 16TH STREET OVERHEAD  
 U.S. D.O.T. No. 028110K  
 ST BR. No. 94-1241  
 RECONSTRUCT THE EXISTING 16TH  
 STREET BRIDGE OVER I-215 WITH A  
 NEW BRIDGE APPROXIMATELY  
 48' WIDE AND 676' LONG.

**16TH STREET OVERHEAD**  
**EXHIBIT "A" Sheet 3 of 3**

# EXHIBIT D

\*\*\*\*\* MAINTAIN PROPRIETARY CONFIDENTIALITY \*\*\*\*\*

BNSF RAILWAY COMPANY  
COMPANY ESTIMATE FOR  
SANBAG

LOCATION ONO

DETAILS OF ESTIMATE

PLAN ITEM : 000137254

VERSION : 1

## PURPOSE, JUSTIFICATION AND DESCRIPTION

BNSF TO PROVIDE FLAGGING AND INSPECTION TO WIDEN 16TH STREET BRIDGE/215 FREEWAY  
100% BILLABLE TO SANBAG  
RDM JIMMY CAPPS DE ADAM RICHARDSON

### MAINTAIN PROPRIETARY CONFIDENTIALITY

THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS.

PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

DESCRIPTION	QUANTITY U/M	COST	TOTAL \$
***** LABOR *****			
FLAGGING - OTHER R.O.W.- CAP	8100.0 MH	195,237	
PAYROLL ASSOCIATED COSTS		85,904	
DA OVERHEADS		400,235	
TOTAL LABOR COST		681,376	681,376
***** MATERIAL *****			
TOTAL MATERIAL COST		0	0
***** OTHER *****			
CONTRACT PREPARATION	1.0 LS	10,000	
INSPECTION / COORDINATION	135.0 DAY	81,000	
TOTAL OTHER ITEMS COST		91,000	91,000
PROJECT SUBTOTAL			772,376
CONTINGENCIES			15,447
BILL PREPARATION FEE			0
GROSS PROJECT COST			787,823
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			787,823